Ontario. [Royal Commission on
the Workman's Compensation Act]
Report. 1967.

REPORT

of

THE ROYAL COMMISSION

In the Matter of

THE WORKMEN'S COMPENSATION ACT

1967

Report of the Honourable Mr. Justice McGillivray, Commissioner appointed to enquire into and make recommendations regarding The Workmen's Compensation Act upon subjects other than detail administration.

COMMISSIONER	The Honourable Mr. Justice McGillivray
COUNSEL	W. Z. Estey, Q.C.
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PRINTED AND BOUND IN CANADA

THE ROYAL COMMISSION

(*Sgd.*) **W. Earl Rowe**

PROVINCE OF ONTARIO

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

TO THE HONOURABLE GEORGE A. McGILLIVRAY of Our Village of Forest Hill, in Our Province of Ontario, a Justice of Appeal of Our Supreme Court of Ontario and One of Our Counsel learned in the Law.

GREETING:

WHEREAS in and by Chapter 323 of the Revised Statutes of Ontario, 1960, entitled "The Public Inquiries Act", it is enacted that whenever Our Lieutenant Governor in Council deems it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein and such inquiry is not regulated by any special law, he may, by Commission appoint one or more persons to conduct such inquiry and may confer the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as the commissioner or commissioners deems requisite for the full investigation of the matters into which he or they are appointed to examine;

AND WHEREAS Our Lieutenant Governor in Council of Our Province of Ontario deems it expedient to cause inquiry to be made concerning the matters hereinafter mentioned:

NOW KNOW YE that We, having and reposing full trust and confidence in you the said George A. McGillivray DO HEREBY APPOINT you to be Our Commissioner,

To inquire into, report upon, and make recommendations concerning, The Workmen's Compensation Act, upon subjects other than detail administration.

AND WE DO HEREBY CONFER on you, Our said Commissioner, the power to summon any person and require him to give evidence on oath and to produce such documents and things as you Our said Commissioner deem requisite for the full investigation of the matters into which you are appointed to examine.

And We Do Hereby Further Order that all Our departments, boards, commissions, agencies and committees shall assist you, Our said Commissioner, to the fullest extent, and that in order to carry out your duties and functions, you shall have the authority to engage such counsel, research and other staff and technical advisers as you deem proper.

To Have, Hold and Enjoy the said Office and authority of Commissioner for and during the pleasure of Our Lieutenant Governor in Council for Our Province of Ontario.

In Testimony Whereof We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of Ontario to be hereunto affixed.

WITNESS: The Honourable William Earl Rowe,
A Member of Our Privy Council for Canada,
Doctor of Laws, Doctor of Social Science,
Lieutenant Governor of Our Province of Ontario

at Our City of Toronto in Our said Province, this sixteenth day of June in the year of Our Lord one thousand nine hundred and sixty-six and in the fifteenth year of Our Reign.

BY COMMAND

J. Yaremko
Provincial Secretary and
Minister of Citizenship

To His Honour, the Honourable William Earl Rowe, P.C., LL.D.,
The Lieutenant-Governor of Ontario

Sir:

I have the honour to submit my Report as Commissioner appointed by Order in Council under date of 16th. June 1966.

I have the honour to be,

Sir,

Your obedient servant,

George A. McGillivray
Commissioner
Ontario Royal Commission
on
The Workmen's Compensation Act

September 15, 1967.

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FOREWORD

Immediately following my appointment as Commissioner I caused an advertisement to be inserted in various newspapers throughout the Province announcing the establishment of this Commission. Names of the papers, the dates of insertion and a copy of the advertisement appear in Appendix A hereto. The advertisement recited the scope of the inquiry, requested submissions from all interested parties, and announced that public hearings would be held at times to be announced.

In addition I caused letters to be sent to all parties shown by the report of Mr. Justice Roach to have submitted briefs upon the last occasion in 1949 when a similar inquiry to the present one was held by him.

The published advertisements and the letters mentioned resulted in a large number of briefs being received. A tabulation of these briefs, together with the names of those who attended at the hearings to support them, is contained in Appendix B. Many submissions were extensive, dealing with numerous matters; others, particularly from individuals, had relation to but one or more of the matters under review.

I received in addition a certain number of letters from individuals complaining of the adjudication of their claims by the Board. These were letters which sought, in effect, to appeal from the Board's decisions and which raised matters that did not come within the scope of this enquiry being matters of "detail administration". All such letters I answered pointing out the limitation of my Commission. I did, however, in every case check from the files of the Board to learn if, in processing those claims, the Board had been dictatorial or bureaucratic or if any matter was involved with which I should deal.

Any letters by individuals which complained of Board decisions but which also raised questions regarding the terms of the Act, appeal procedure, or matters of the kind were treated as submissions and the persons concerned were informed of the hearings when they occurred.

Much thought and work went into the various submissions heard by the Commission. I was much impressed by the sincerity with which all were presented. It was but to be expected that those representing the various labour organizations would seek an improvement in compensation and other benefits for those they represented. Representatives of industry on the other hand were naturally very concerned about mounting costs, all of which are assessable wholly against the employer. All argument, however, was presented in a temperate manner and none was presented that I felt to be in the least degree frivolous. The presentations were ably given and I was made to feel that a real effort was exercised in every case to assist me in my task.

A preliminary hearing was held at 67 Richmond Street West, Toronto, on August 16th, 1966 for the purpose of making those interested aware of the submissions filed and for discussion of the manner in which the hearings would proceed. News announcements of this hearing were given to the press and all parties who had filed submissions were notified. Copies of the submissions were subsequently provided to all who requested them.

Major hearings began on September 26th after due notice to all who had made submissions and to the press. These hearings commenced on September 27th, and continued throughout October and part of November. Notices of matters to be considered were forwarded each week to interested parties. This enabled those who did not find it possible, or necessary, to attend all meetings to be present when the matters in which they were particularly interested were being discussed.

All hearings were held in Toronto. There was but one request for a hearing elsewhere. The Municipality of Timmins made a pressing request for a sitting of the Commission in that town. There would have been no difficulty in doing so and the request was refused only because, from the information furnished, the sole purpose of the hearing would be to hear representations from persons dissatisfied with decisions of the Board upon their claims for compensation. By my terms of reference I could not deal with these and by attending I would only encourage hopes which I was unable to satisfy. In addition certain resolutions by the Town Council had been presented by the Ontario Municipal Association which were already before the Commission and representatives from trade unions with membership in that area were in attendance at most of, if not all, the hearings. I did not feel justified in moving the Commission with counsel and secretary to Timmins under these circumstances.

Throughout the hearings I received the utmost cooperation from members of the Board and from its senior officials. All demands for statistical and other information were promptly met and officials have stood ready at all times to be of service when requested.

Most of the evidence had reference to suggested changes in the Act regarding compensation and other matters. Of the Board itself and its operations there was, except for major criticisms of appeal procedure and of purported leniency in allowing doubtful claims, surprisingly little criticism.

Letters received from individuals complaining of the Board's adjudication of their claims were in every case critical but even these were few in number, some thirty in all. The small number, of course, could be due to the terms of the advertisement announcing appointment of the Commission and its restricted scope. While those complaining undoubtedly believed their complaints to be justified, the files of the Board did not support their criticisms. On the contrary it appeared that the Board had given each case full consideration in the first instance as well as on appeal and that outstanding medical advice had been consulted in nearly every instance. I can express no opinion regarding the actual adjudication of such claims.

The work of the Board has expanded from the handling of some 1,500 claims a month in 1915 to as much as 1,650 on a busy day in 1965 with total expenditures for the year expanding from $802,197 in 1915 to $115,518,197 in 1965. Benefits to injured employees amounted in 1965 roughly to 90 cents of each assessment dollar, administrative costs to 7 cents and safety association expenses to 3 cents. At the time of the hearings some 12,000 pieces of mail were going out each day and some 1,600 letters a day were being received relating to new claims. These expanded demands for service required a complete overhaul of the existing administrative structure. This was undertaken and completed in 1965. A new management structure was evolved and changes and improvements were made in all departments including provision of a new and enlarged computer system to achieve a rapid adjudication of claims, a faster and more accurate system of records, and an adequate information service for claimants or their representatives. The change made in claims procedure was designed not only to speed up decision making at that level but to provide as well additional rights of appeal which I describe elsewhere. Individual departments will be dealt with in other portions of this report and I shall not have occasion again to refer to the overall administrative establishment as it is now. I have had an opportunity to inspect all phases of the Board's operations and have received the impression that the revised administrative structure which has now been functioning for some time is operating smoothly. Substantial credit is due to the Chairman, members of the Board and officials of the Board for having achieved, without any wide expansion of physical facilities, what appears to be a modern and efficient structure capable of handling the work of the Board for a number of years to come. Some further changes in administration have occurred since the preparation of this report. In particular there has been a change in the composition of the appeal tribunal by the addition of two members. I have not changed what I had already written but can give this arrangement my full approval as it will allow the tribunal by sitting in two sections to minimize delay in the appeal work.

I have added as Appendix C to this report a short summary of The Workmen's Compensation Act. It is for the benefit of those not already acquainted with its provisions. It will be convenient throughout this report to refer to The Workmen's Compensation Act as the Act and such a reference when it occurs will be to that Act.

PRINCIPLES UNDERLYING THE ACT—HISTORICAL BACKGROUND

No evaluation of the various suggestions for change made in the course of this enquiry is possible without reference to the nature and origin of the Act itself. The Workmen's Compensation Act first came into effect in this Province in 1914 following a report by the late Chief Justice Meredith who, as a Royal Commissioner, had conducted an enquiry into employers' liability laws. The resultant Act pioneered legislation of the present type in this country. This legislation was reviewed and reported on by subsequent Royal Commissions, the first by the late Mr. Justice Middleton in 1932, and the second by Mr. Justice Roach in 1950. Reviews of similar legislation have been had in other provinces from time to time over the years, the last of which was by Mr. Justice Tysoe in British Columbia in 1965. In each case the Commissioner reporting, in order to evaluate the limited scope of the Act under review, outlined the circumstances which brought such legislation into existence and the evils it was designed to remedy.

Though this has been done on each occasion, I again present a short outline of the historical background in order to emphasize once more the principles which underlie legislation of this type. I do so because many who read this report will not have had the benefit of reading the reports of my predecessors, but more particularly I do it because I am satisfied from the submissions made and the testimony heard that today's workmen and the public at large have a misconception of the principles which limit the degree to which Workmen's Compensation legislation can be extended and which distinguish it from welfare measures.

That such a misunderstanding exists is not to be wondered at as it is now over half a century since the first Workmen's Compensation Act was introduced in 1915 in this province. Prior to that time under the common law the workman who suffered injury at his job could recover compensation therefor only if he brought action against his employer. This of course involved delay during which he was without pay and during which he was required to pay his medical bills. In the event that he sued, he could recover only if he could establish that the employer or someone for whom he was responsible had been negligent, the sole duty resting upon the employer being to take reasonable care for the safety of his employees. Even when such negligence was established by an action at law, the employer might still escape a judgment by proving negligence on the part of the employee himself. This was but part of what the injured workman faced. If successful at trial he might be, and, more often than not, was, faced with an appeal from the Court's decision. Employers were financially able to pursue such appeals. The workman, on the other hand, who had found sufficient resources to finance a trial, was frequently unable to proceed to appeal. He was then faced either with surrender or compromise. A further hazard was that though successful

at trial he might face difficulty in collecting under the judgment if the employer was financially weak, particularly if the judgment was for a large amount.

I need hardly add that the workman who surmounted these difficulties had still to disburse a part, perhaps a substantial part, of the judgment recovered, in payment of legal fees and other accounts.

Mr. Justice Sloan reporting in 1952 upon the Workmen's Compensation Act in British Columbia referred to the bleak hardships faced by the injured man and his family at that time. From his experience he considered that but 20 to 30 per cent of workmen recovered compensation for their injuries and that only after a protracted and anxious bout with the law. Estimates based on certain studies conducted in England were that but 50 per cent. of what the common law system cost the employer ever reached the employee. By contrast, under the present Workmen's Compensation Act in this province some 90 per cent reaches the employee. It is also to be noted that a further three per cent. is applied towards the achievement of safer working conditions.

It was to improve this system that, by the Workmen's Compensation Act of 1915, a new concept in this field was introduced. By it the common law rights of the employer were swept aside and the employer was made responsible for accidents suffered in the course of employment without regard to fault on the labourer's part. In partial compensation for the loss of such rights the amount which the employer could be required to pay was made subject to certain limits. To finance this plan a compensation fund supported only by employers' contributions was established. The Act was in fact a compromise between industry and labour. Each sacrificed certain rights and to each accrued certain benefits.

Benefits to Workman

1. He was entitled to payment of 55 per cent. of remuneration up to a certain limit without the necessity of establishing fault on employer's part.
2. Negligence by workman leading to or resulting in accident did not affect his right to recover.
3. Compensation commenced immediately following a seven day waiting period.
4. He was relieved of the hazard and cost of litigation.
5. Recovery was no longer subject to the hazard of collection. The financially weak employer became a participant in a joint coverage to which almost all industries contributed.
6. Awards of permanent disability were made for life without regard to the hazards of loss of work, sickness or old age.
7. He was protected from suit for injuries to others resulting from his negligence.

Contributions of Labour

1. Seven day waiting period suffered without compensation,
2. 45 per cent. diminution of income.
3. Loss of right to claim damages for pain and suffering.

Benefits to Industry

1. Payment limited to 55 per cent.
2. No payment for pain and suffering.
3. For those within Schedule I the benefit of a mutual insurance scheme which protected in particular the financially weak employer.
4. Possible better labour relations when litigation absent.

Contribution by Industry

1. Mandatory payment of wages up to 55 per cent. without fault having been established.
2. Payment of fixed amount of death benefits, burial expenses, and the like.
3. Full cost of administration of the Act.

Since 1915 the contribution of the worker has been diminished and that of industry has been increased substantially in the following instances:

1. Rate of compensation, subject to ceiling, has been increased to 75 per cent. of earnings up to $6,000 per annum.
2. Costs for medical aid are payable from the time of accident.
3. Waiting period has been reduced from seven days to three full calendar days.
4. Definition of "accident" has been made broader.
5. Rehabilitation facilities have been made available to injured workman.
6. Provision has been made for supervision and cost of accident prevention associations.

The general concept of the Act finds expression in the following extract from the report of Mr. Justice Roach in 1950:

"The public benefit by the fact that the worker, though disabled, is enabled to retain his self respect. The compensation which he receives is not charity. He has in fact purchased it. If the accident results in death the dependants of the worker do not become public charges. Society as a whole benefits but the public, too, pays a proportion of the cost. Its share is that part of the cost which is passed on to it by the employer and such part as may be contributed out of the Consolidated Revenue Fund of the Province towards the operation of the Act under the provisions in the Act with respect thereto.

"This Act should be considered for what it is and was originally intended to be, namely, a scheme by which compensation is provided in respect of injuries to workers in industry. It is not a system for dispensing charity. It is not unemployment insurance. It is not social legislation for the purpose of elevating the standard of one group in society at the expense of another.

"I will have occasion to point out later that certain amendments which have been introduced into the Act since it was originally passed are really in the nature of social legislation and a departure from the original scheme and purpose of the Act. The effect of those amendments has been to impose upon industry burdens which should be borne by society generally.

"If the true purposes and objectives of the Act are adhered to, justice will be done as between industry and labour. If, on the other hand, those purposes are lost sight of, or this Act from time to time be regarded as a convenient place into which to put legislation which in substance is social and not compensatory, it may become very much distorted. In the result, labour will continue to be relieved from unjust burdens from which it suffered too long under the common law but an injustice will be done to industry by placing on its shoulders burdens which should be borne by society generally."

No contributions are now received from the Consolidated Revenue Fund of the Province. Mr. Justice Roach in the above passage gives expression to the underlying principles of the Act as they were conceived by Chief Justice Meredith in 1913 from whose report the first Workmen's Compensation Act came into existence. At that time no alternate measures of relief were available to an injured workman other than the precarious right to sue his employer. Since that time there has been a great proliferation of welfare measures in the federal, provincial and municipal fields, the last and most important of which is the Canada Pension Act and the time has come when these measures must be considered when reviewing questions of compensation under The Workmen's Compensation Act. Because of questions which will undoubtedly arise as to their relevance I shall deal with them under a separate heading. Following this plan questions relating to the adequacy of compensation under the present Act will be dealt with upon the principles stated by Mr. Justice Roach without reference to any modifications that may be considered necessary by reason of other legislation which may affect compensation.

COMPENSATION

DISABILITY PENSIONS AND AWARDS

For either total temporary or permanent disability a workman is entitled to periodic payments of 75 per cent. of his "average weekly earnings" during the previous twelve months or, under some circumstances, for a lesser period. For partial temporary or partial permanent disability a proportionate amount is assessed according to the degree of disability.

All the provisions for permanent and temporary disability, partial or total, are subject to the requirement that "average earnings" are to be computed so as to amount as nearly as possible to the rate per week or month of the workman's pay but they must not, in any case, exceed $6,000.00 per year, referred to herein as the "wage ceiling". Where employment prior to the accident was of short duration and it is impracticable to compute the rate of pay by reference to the workman's employment at the time of the accident the Board may take into account the average pay earned during the 12-month period prior to the accident by a person in the same type of employment and employed by the same employers, and in those cases where no such comparison is available the Board may, in computing the average pay, consider the earnings of a person in the same type of employment in the same locality. These rules are in turn subject to the further provision that where the Board deems it more equitable the disability allowance may be computed having regard to the earnings of the workman "at the time of the accident".

The foregoing benefits are subject to the minimum compensation provisions in section 43 of the Act. The minimum compensation for temporary total disability is $30.00 a week and for permanent total disability $100.00 a month with proportionate payments in each category for partial disabilities.

The main submissions to this Commission regarding disability awards to workmen were five in number namely:

(1) that compensation awards should be of a greater percentage of earnings than the 75 per cent. allowed by the present Act;

(2) that the practice followed by the Board in its calculation of average earnings should be altered;

(3) that the wage ceiling which establishes the maximum compensation payment should be abolished;

(4) that in the case of temporary partial disability the workman should be entitled to compensation as for total disability until he is able to resume his employment;

(5) that the benefits payable under fatal accident claims should be extended.

PERCENTAGE OF EARNINGS AS A BASIS FOR PENSION COMPUTATION

When originally enacted, the statute provided that the disability pension would be based upon 55 per cent of the workman's average income computed in accordance with the statute. The percentage was increased to 66⅔ per cent in the year 1920 and to the present level of 75 per cent on January 1st, 1950.

As one might expect, the contributors to the accident fund and the Schedule 2 employers have made submissions to me to the effect that the percentage used in the computation of disability pensions should remain at 75 per cent of the workman's average earnings. Trade unions, on the other hand, have proposed that the percentage be increased either to 100 per cent of average earnings or to something between 75 per cent and 100 per cent. These submissions and this portion of my report deal with the basis of computation of the initial pension and I shall treat separately proposals that the initial pension, however computed, should be subject to variation in the future in the event that the real value of the pension declines.

It might be well to consider at the outset the principle upon which a percentage of wages prior to injury was selected as an equitable basis for calculation of compensation. As stated earlier in this report, the concept of workmen's compensation legislation is that there be a sharing of the cost and consequences of injury between the worker and the employer. An employer contributes financial support to the fund and accepts liability without fault. The workman's contribution is the loss he suffers after the injury which is not covered by compensation.

In this type of risk or cost sharing, as in all types of casualty insurance, it is a basic concept that the compensation paid out of the fund should be less than the income of the recipient would have been had there been no disabling accident. It is, accordingly, difficult to reconcile a long-standing concept with the proposal made by several of the trade unions that the rate should be 100 per cent.

In addition, it was pointed out in a number of submissions that allowances payable out of the fund are not subject to income tax and other deductions and that substantial savings in transportation or other costs would occur. If a workman were to receive 100 per cent of his wages, and if his wages were less than the prescribed wage ceiling, his take-home pay would at least equal and in most cases would be greater after injury than before injury. It is with these considerations in mind that employer organizations appearing before this Commission have asked that the present 75 per cent rate be maintained. In some instances, the submissions were that a high rate would promote malingering; in others, that a lower rate would increase the workman's contribution excessively.

The opposing viewpoints on this issue are well illustrated by the submissions of International Nickel Company of Canada Limited on the one hand and the United Steelworkers of America on the other. In the International Nickel submission an illustration was given of a single man, receiving wages at the rate of $100 per week, who receives compensation for temporary total disability. On the

basis of the present statute, the disability allowance would be $75 per week, which would be received without deduction for taxes, unemployment insurance or for any other statutory contribution. The same man, if he continued to work at the same rate of pay, would be subject to deductions as follows:

Wages		$100.00
Deductions:		
Income Tax	$14.10	
Unemployment Insurance	.94	
Ontario Hospitalization	.40½	
P.S.I.	.39	
Group Life Insurance	.71	
Sickness and Accident Insurance	.96	
Canada Pension Plan	1.59	
Union dues	1.25	
Estimated monthly transportation charge	2.50	
Total Deductions		22.84
Net Take-home Pay		$77.16

The company counsel pointed out that most, if not all, of these deductions would not be payable during the period when the workman was receiving disability allowances. Even though exempted, while drawing compensation, from the mentioned payments a workman might still, of course, suffer a loss of credit or coverage in some of the funds or plans. In any event, it would appear from the foregoing example that the workman would receive in the end result something very close to his pre-injury net take-home pay.

The United Steelworkers, in their computation, used an average weekly pay of approximately $58.00 to produce a calculation which indicates that a compensation payment of 85 per cent of average earnings might be expected to produce a result approximately equal to the pre-injury take-home pay. The Union recognized the principle that compensation payments need not be based upon 100 per cent of average earnings in order to compensate the injured workman fully for his loss of earnings but pointed out that while the workman is saved some deductions during the time on compensation he still must, in many circumstances, contribute to medical plans in order to continue his family coverage; and unless he continues pension payments, his credit in the pension fund does not continue to climb as it would had he not been injured.

Another submission was that of the International Union of Mine, Mill and Smelter Workers (Canada) wherein it was submitted that benefit payments should be computed on the basis of 100 per cent of average earnings. This union, it is to be noted, as well as other unions, did not concur in the Steelworkers' submission that the compensation basis should be increased to 85 per cent of earnings.

The Board prepared at my request an estimate based upon the 1965 assessments of the cost of increasing the compensation basis to 80 per cent of earnings.

This projection is as follows:

TABLE 1

PROPOSED BENEFIT INCREASING COMPENSATION BASIS TO 80% OF EARNINGS*

		% Increase
Estimated annual additional cost.....	*$5,000,000*	6.1 of assessments

**Not applying a change in wage ceiling.*

An examination of the statutes in other provinces indicates that 75 per cent is the highest rate of compensation in any province in Canada and with few exceptions is the highest rate anywhere. In those jurisdictions where compensation exceeds 75 per cent, the maximum weekly allowance falls below that paid here.

I have reached the conclusion that no change should be made in the 75 per cent basis. In doing so I am motivated by a recognition of the original concept of Workman's Compensation legislation and secondly, by the need of avoiding a result wherein the workman would, at least under some circumstances, have a greater take-home pay after injury than before. Such a condition would contribute to a reduced incentive to keep claims in number and duration to realistic proportions. It is not desirable for this reason, if for no other, to vary the present basis of calculation of compensation under the Act, and I therefore recommend that no change be made.

MAXIMUM EARNINGS ON WHICH COMPENSATION IS COMPUTED (WAGE CEILING)

At the present time the statute provides a ceiling on wages which may be taken into account in the computation of disability allowances, of $6,000.00. Consequently, the effective maximum disability allowance is 75 per cent of $6,000.00, or $4,500.00 per year. This provision is found in the following section of the Act:

> "**44.** (1) Average earnings shall be computed in such a manner as is best calculated to give the rate per week or month at which the workman was remunerated but not so as in any case to exceed the rate of $6,000.00 per annum".

The submission made by all unions appearing and by the Ontario Federation of Labour speaking for the member unions in Ontario of the Canadian Labour Congress was that the ceiling should be abolished and that benefit payments should be based upon 100 per cent of earnings lost. In support of this argument the representative of the United Steelworkers, for example, pointed out that a steel mill employee might earn, without overtime, in excess of $12,000.00 per year and, as an example, under a current collective agreement in Hamilton, a journeyman

plumber, without overtime and fully employed, would earn $10,500.00 per year. Reliance was placed upon the recommendation of Sir William Meredith in his report made in 1913 in which he said

> " . . . I therefore recommend that the draft bill be amended by adding the following to sub-section 1 of section 39:
>
> 'But not so as to exceed in any case the rate of $2,000. per annum'. If no such limit is prescribed the result would be that the small employer, in the case of an accident happening in another establishment to a highly paid official, would be unduly burdened. I propose $2,000. as the limit because that sum is probably the maximum amount earned in a year by the highest paid wage earner".

This, it was urged, must be interpreted to mean that under the original scheme of the Act workmen were to be entitled to compensation by reference to their yearly earnings without any ceiling and therefore that his concept of the Act has been departed from and should be restored. The brief by the Ontario Federation of Labour pointed out that under present legislation a wage earner in the highest bracket might have to accept compensation for but 40 to 55 per cent of his earnings.

Representatives of management asked that the ceiling be retained, most of them asking that it be at the present level of $6,000.00. Only one suggested an increase. The Retail Council of Canada in its brief felt that the present ceiling should be continued until "the earnings of a preponderance and we would suggest a substantial preponderance of employees covered by the Act exceed the existing maximum". The Canadian Manufacturers' Association on the other hand favoured an adjustment where necessary to maintain it "in the same kind of relationship to overall wages as . . . in the past". Those who opposed a change did so upon the ground that a true insurance scheme would produce sufficient replacement of income to enable the average workman and his family to meet their obligations. In its brief the International Nickel Company Limited submitted that no justification had been advanced for a higher ceiling. Reference was made to the original concept of the plan whereby the full cost of compensation, carried as it is by the employer, represents the employer's contribution, and the contribution of the employee is the injury and loss of compensation which he has suffered. The company submitted that, by the increase of the percentage of wages payable and successive changes in wage ceilings over the years, the employees' contribution has been greatly minimized and that any additional employer contribution by removal of the wage ceiling would result in a substantial departure from the original scheme of the Act.

This conflict of views has been a matter of consideration by the various Commissioners who have had to review Canadian compensation Acts. The most recent review is by Mr. Justice Tysoe in his report made for British Columbia in 1965 in which he states:

"Chief Justice Turgeon held an inquiry into workmen's compensation in Manitoba in 1958. In his Report he said:—

'Sir William Meredith's selection as a standard of the wage earnings of the highest paid wage earner is no longer followed but has given way to other considerations. When the matter is discussed now it is pointed out that men with larger salaries should be expected to provide, in part at least, for their own insurance, and that, unless a maximum is set under the Act, assessments in some industries would become unduly burdensome.'

Chief Justice Sloan in his 1942 Report said:—

'The reasons for the inclusion of the maximum principle and the consequent exclusion of the highly paid wage-earner or salaried executive from the benefits of the Act are generally regarded to be, first, that the Act is designed to protect those who are unable, because of their low income, to carry any accident insurance. Those in the higher income brackets are considered able to protect themselves. Secondly, the compensation awarded highly paid workers would, in hazardous occupations, tend to increase compensa-assessments on small industries in those classes to an unduly high rate.'

"I am old fashioned enough to believe that thrift and saving for a rainy day are virtues. Responsible individuals still practice them, though perhaps not to quite the same extent as when I was a young man.

"I utterly reject the proposal that there be no maximum at all on average earnings; I have no doubt that there should be such a maximum. The amount must necessarily be a somewhat arbitrary one for the variables are innumerable. A man may be single and have only himself to keep. Another man, though married, may have a wife who works and contributes to the family income. Still another married man may have an invalid wife. Another married man may have one child or a number of children to support and maintain. Examples such as these could be multiplied. Compensation rates cannot be based on individual needs. Anything akin to a means test must not be introduced into workmen's compensation, for that is for social welfare. Lacking it, one can work only on fair averages. The difficulty is, of course, to determine the mean . . ."

I am in accordance with the views expressed in the above quotation. While recognizing that arguments advanced to this Commission to the contrary by union representatives were honestly and sincerely made I feel that they misapprehend the basic scheme of the Act. As a consequence I have reached the conclusion that to remove the ceiling established by section 44 (1) entirely would do violence to a concept which has now become deeply embedded in the scheme of workmen's compensation. My recommendation is that a wage ceiling should be retained. Those in the higher wage brackets are usually to be found in the larger industries. If not already protected by insurance schemes or the collective agreements under which they work a measure of protection can be secured in the latter way or by private insurance coverage. I do not feel that industry should be called upon to support by compensation a standard of living experienced by the small percentage of labourers in the highest wage bracket.

This has been the policy adopted by all Canadian provinces. The ceilings elsewhere are:

Alberta	$5,600	Prince Edward Island	$5,000
British Columbia	$6,600	Quebec	$5,000
*Manitoba	$6,600	Saskatchewan	$6,000
New Brunswick	$5,000	Northwest Territories	$4,500
Newfoundland	$5,000	Yukon	$4,000
Nova Scotia	$5,000		

**The amount in Manitoba was increased to $6,600 on April 1st, 1967.*

At the present time none of the other provinces provides for a variable or automatically adjusted wage ceiling. In the event that the wage ceiling is increased either arbitrarily or by way of a variable statutory formula such an increase should relate only to future pensions.

Mr. Justice Tysoe made the suggestion "that the maximum as it exists from time to time be increased by $1,000 as often as the year-end statistics of the Board show that 45 per cent or more of the legitimate claims for time-loss compensation arising during the year are by workmen with actual gross earnings, during the 12-month period immediately preceding the occurrence giving rise to their respective claims, of more than the existing maximum, and that not less than 20 per cent of such workmen (being four-ninths of such 45 per cent) had actual gross earnings during the 12-month period of at least $1,000 more than the existing maximum".

There have been periodic adjustments by the legislature of the ceiling figures in the Act as the average wages of workmen have increased. As this will presumably become necessary from time to time in the future as it has in the past it is desirable that authority be given the Board to make such adjustments automatically. To achieve this result I propose an amendment to allow an adjustment of $1,000 upwards in the ceiling whenever Board statistics for the previous year indicate that more than 45 per cent of workmen receiving compensation are receiving more in pay than the existing maximum. I shall make this recommendation.

It is necessary also to review the situation as it exists at present and to consider what change, if any, should be made now. For this purpose the Board has furnished the following tables:

TABLE 2

ACTUAL EARNINGS FOR PERMANENT DISABILITY AWARDS
1965—Initially Settled Claims (Provisional)

Annual Earnings	*Number of Claims*	*Percentage of Claims*
Under $6,000	2,879	89.6
$6,000 and under $6,500	95	3.0
6,500 and under 7,000	66	2.1
7,000 and under 7,500	44	1.4
7,500 and under 8,000	32	1.0
8,000 and under 8,500	13	0.4
8,500 and under 9,000	12	0.4
9,000 and under 9,500	6	0.2
9,500 and under 10,000	7	0.2
10,000 and over	8	0.2
6,000 and over, exact amount unknown	49	1.5
Earnings were in excess of $6,000 in 10.4% of claims.	3,211	

TABLE 3

ACTUAL EARNINGS FOR TEMPORARY TOTAL DISABILITY AWARDS

3rd Quarter 1965—Initially Settled Claims

Annual Earnings Over $6,000	*No. of Claims*	*Percentage*
$6,000 and under $6,500	1,499	6.5
6,500 and under 7,000	780	3.3
7,000 and under 7,500	679	2.9
7,500 and under 8,000	456	2.0
8,000 and under 8,500	308	1.3
8,500 and under 9,000	133	0.6
9,000 and under 9,500	139	0.6
9,500 and under 10,000	62	0.3
10,000 and over	174	0.7

Earnings were in excess of $6,000 limit in 18.2% of claims.

Estimated figures for 1966 indicate that earnings would exceed the limit of $6,000 in 25.2% of the claims.

As will be seen it would appear from the latter table that 25.2 per cent of claimants would be over the wage ceiling in 1966. Very substantial wage increases continue to be made and it is reasonable to assume that at the time when this report appears a higher percentage of claimants will be receiving wages in excess of $6,000. per annum. In these circumstances it will not be looking far into the future to see a time when 45 per cent of claimants will be receiving more than $6,000. While that position has not been reached as yet it would seem desirable to anticipate it. There is no assurance that my recommendation for automatic changes will be acted upon in which case I am called upon to make a recommendation either for or against a change at this time. The Board has reported to me that the estimated annual cost of increasing the ceiling to $7,000. per annum would be $1,800,000. involving an increase in assessment of 2.2 per cent. I consider it necessary in view of the number of working men now earning more than $6,000. per year to effect some change. The present rate dates from 1963. I have decided that, as the time when 45 per cent of the working force will be over that limit is close at hand, a change to a ceiling of $7,000. is justified and will avoid the necessity of a further change for some considerable time. Amendments to sections 44 (1) and 122 will be necessary.

Recommendations

(1) *Section 44 (1) of the Act should be amended by substituting for the figure "$6,000." in the last line thereof the figure "7,000."*

(2) *Section 122 of the Act should be amended by substituting after the word "than" in the last line the words "the rate of annual earnings established under subsection 44 (1)."*

(3) *That an amendment be made to permit the Board to increase the maximum earnings figure by $1,000. whenever the year end statistics of the Board show that 45 per cent or more of the allowed claims for lost time compensation during that year were by workmen with gross earnings, during the twelve months' period preceding the occurrence giving rise to their claims, of more than the existing maximum.*

AVERAGE EARNINGS

The statute provides in section 40 that for temporary total disability the workmen's compensation shall be computed with reference to his average weekly earnings "during the previous 12 months". For permanent disability section 42 provides for the calculation of average weekly earnings upon the same basis. Section 44 appears to be in conflict with the provisions of the above sections. Subsection (1) of section 44 provides for the computation of average earnings in such a manner "as is best calculated to give the rate per week or month at which the workman was remunerated". Subsections (2) and (3) contain special provisions for computation in case of shortness of service or casual employment, and for a case where the workman had concurrent employment with two or more employers. Subsection (6) in turn provides "Where in any case it seems more equitable, the Board may award compensation having regard to the earnings of the workman at the time of the accident".

On the authority of section 44, subsections (1) and (6), the Board has adopted the practice of accepting the earnings' record for four weeks prior to the accident as the basis for computation of average weekly earnings in place of the 12 month period specified in section 40, in all awards for temporary disability.

Objection to this practice was voiced by the Board of Trade of Toronto and by the Automotive Transport Association, the objections taken being that, as a result of adopting it, substantial lay-offs during the year may be ignored, that in a time of rising wages the top wage will be within the last four weeks, and that overtime immediately preceding the accident might distort the true wage picture. I am informed by Board officials that its present practice originated during the time of the last war when numerous complaints were received from management that, because of labour shortages and an increasing work force, it was difficult to supply a workman's wage record for 12 months. That situation has not changed and it is the opinion of the Board not only that industry generally is opposed to any return to a 12 month requirement but that the greatest difficulty and much delay would be experienced if the present practice were to be changed. In view of these considerations and the fact that all but two of those representing industry failed to raise objections, I would recommend no change in the present practice regarding temporary disability.

The difficulties mentioned do not present themselves to the same degree with permanent awards for the number of these is, relatively, not large. On all these the Board bases its awards on the 12 month average and this practice should also be continued.

There appears to be an unintended but serious restriction on the flexibility with which the Board may approach the question of determining the applicable average earnings in those cases where, after the accident from which the disability has arisen, a man has been able to return to work and later finds it necessary through recurrence to again discontinue work. By section 40a the Board may compute the allowance for temporary disability in the case of a workman "who has been awarded or at any time in the future is awarded compensation for permanent disability" either upon his earnings at the date of the

original accident or at the date of the recurrence. It does not provide a similar basis of assessment for a workman who has suffered a temporary disability, who returns to work, and who suffers a recurrence. There appears to be no valid reason for failure to provide in the latter instance the relief that is made possible to the man who has a permanent disability award. I would recommend a change in this section in the form which I shall later outline.

Some representations were also made by men in receipt of permanent pensions who had returned to work but were unable to continue. These workmen felt that their permanent pension should be based upon their earnings at the time of the subsequent discontinuance following temporary disability and not upon those earnings prior to the accident. I am unable to accede to this submission. I realize that a change of the nature suggested might furnish an incentive to some workmen to rehabilitate themselves who might not otherwise make the effort. To make such a change, however, would result in the few workmen able to place themselves in the position mentioned receiving permanent compensation upon a different basis from all the others. That consideration impels me, with some regret, to decide that no alteration in the section to provide for the cases mentioned can be made.

Recommendations

I RECOMMEND THAT

(1) *Computation of average earnings in determining permanent disability compensation under section 42 should continue to be based upon the 12 month average as presently described in section 40.*

(2) *Section 40 providing as it does for computation of average earnings in connection with temporary disability allowances should not be changed. The Board may, however, upon the authority of section 44 (1) and (6) continue its present practice of accepting a shorter work period in cases of temporary disability.*

(3) *The discretionary power granted in section 44, subsections (1) and (6) should be made subject to the limitation that it shall not apply to computations under section 42.*

(4) *Section 40(a) should be amended by striking out, in the first three lines of the section, the following words: "Where a workman, who has been awarded or who at any time in the future is awarded compensation for permanent disability" and inserting in place thereof the following words:*

"Where a workman, who has become entitled to benefits under the Act"

so that the section as revised will read as follows:

"Where a workman, who has become entitled to benefits under the Act and has returned to employment becomes entitled to payment for temporary disability by reason of any matter arising out of the original accident, the compensation payable for such temporary disability shall be paid on either the average weekly earnings at the date of the accident or the average weekly earnings at the date of recurrence of the disability, calculated in the manner set out in section 40, whichever is the greater".

TEMPORARY PARTIAL DISABILITY

The provision for compensation for partial disability is section 41. It reads: "**41.** Where temporary partial disability results from the injury, the compensation shall be a weekly payment of 75 per cent of the difference between the average weekly earnings of the workman before the accident and the average amount that he is earning or is physically capable of earning, as determined by the Board, in some suitable employment or business after the accident, and is payable so long as the disability lasts, and subsection 3 of section 42 applies".

Many, though not all, injured workmen are compensated for some time following an accident upon a total disability basis. When at a later date the attending physician or other medical authority certifies the workman as partially recovered and fit to do light work it is the general practice of the Board to reduce full compensation payments by 50 per cent. In a certain number of cases compensation may be reduced to 25 per cent. The 50 per cent figure is adopted and continued in most cases to avoid the necessity of varying the award from time to time according to whether the disability, using examples, was a 70 per cent one or a 10 per cent one. The practice described is considered to be a rough compliance with the terms of the section which restricts compensation to 75 per cent of the difference between what a man was earning and what he earns or is physically capable of earning.

This provision has been the cause of numerous submissions to this Commission. Protests have come from unions, members of parliament and from a number of individuals. All arise from the fact that in many instances men are unable to find partial employment and, as a consequence, must seek help under the unemployment insurance scheme or, in some cases, from local sources. In some industries, particularly the larger ones where there is a wide variety of jobs, it is possible to find work for men in the above category. If a man is re-employed with no wage loss and the employer indicates a loss in value of services, temporary partial disability payments based on value of services are paid to the employer. Partial disability must be supported by medical evidence. In many cases, however, particularly with woodsmen, workers in the construction industry, workers in some mines and in other fields, such work is not available. The submissions by all who protested were that a disabled workman should be paid full compensation till re-employed or till light work is found for him. The complaints are directed to the provision itself and not to the Board which must comply with the Act. The Board does seek to give a measure of relief in places where no possibility of light work exists by keeping a workman on full compensation for a limited time after he has been reported fit for light duty but it is unable to go further than that.

There can be no doubt that distress is suffered by many who are unable to find the work necessary to supplement the compensation payment. It is a problem which has been the subject of complaint to every Commissioner who has had to deal with compensation matters. To reach an answer one has to go back again to the principle of the Act which is that every workman must receive, at

the expense of the employer, compensation for the degree of disability suffered. The concept cannot be stretched to require an employer to insure that every injured employee will find re-employment. If there is no work available when a man recovers, the employer, under any concept of compensation, cannot be required to find work for him. The same applies to the man who goes on permanent partial disability. He, too, must seek employment suitable to his lessened capacity but it has never been suggested that the employer should be made to compensate for more than the functional loss, or that the employer is required to re-employ or find work under these circumstances. Though compensation may be assessed on a different basis in temporary partial from that in permanent partial disability cases there can be no justification for awarding to the temporarily disabled that which is denied to the permanently disabled. The government in its unemployment insurance legislation recognizes its responsibility to those who are out of work. This welfare measure takes over where the Act ends and the workman at that stage is in no different position from that of any other workman unable to find a job.

On several occasions during the hearings it was said that workmen placed on partial disability allowances were unable to draw unemployment insurance. That these opinions were in error appears from the following letter filed with the Board.

Department of Citizenship and Immigration

CANADA

305 Rideau Street,
Ottawa 2, Ontario
22 September, 1966.

Mr. G. A. Johnston, Secretary,
The Royal Commission on
The Workmen's Compensation Act,
67 Richmond Street West, Toronto 1, Ontario.

Dear Mr. Johnston:

This refers to your letter of September 13 concerning the question of whether a workman who has a temporary partial disability would receive assistance from the National Employment Service in placing him in employment.

The National Employment Service would not refuse assistance to an individual in the circumstances described in your letter. In fact, this person would fall in the category of those applicants who require particular and specialized attention. He would be interviewed and counselled by the Special Services Branch and be referred to suitable employment that he was physically capable of doing.

I trust this will answer your enquiry. However, if you wish further information please contact me again.

Yours sincerely,
G. G. Duclos,
Assistant Deputy Minister and
Director General—Manpower.

It appears that trouble does arise in many cases where tradesmen such as plumbers, refuse to accept available light work except in their own trades. The loss of unemployment insurance under those circumstances depends of course upon the decision of the workman himself and does not justify the view that such insurance is unavailable.

As I have mentioned, the demand for the same compensation for temporary partial disability as for temporary total disability has been before every Commissioner in Canada who has had to consider Workmen's Compensation legislation. Each report has contained a lengthy review of the principle which all agree precludes awarding full compensation throughout to the temporarily partially disabled workman. By reason of the fact that these reports, which are available, discuss so fully the arguments for and against the relief now sought I have felt it unnecessary to do more than state my reasons in the brief manner found above. They disclose that I am not prepared to make a recommendation for any change in section 41.

I discuss elsewhere the work of the Board in rehabilitation matters. There was a wide discussion of the problem when evidence was heard relating to compensation. While I have felt unable to accede to the representations made regarding compensation I can recommend, and do, that there be redoubled efforts by the Board to find work for men who are disabled either partially or permanently. The employer as well as the employee benefits when the man gets back to work and no problem of compensation then presents itself. I am informed that a more vigorous effort by the Board is already under way. It will have the full approval of both labour and management.

FATAL ACCIDENT BENEFITS

The compensation allowances payable on the death of a workman from a compensable injury are found in several parts of the statute. The specific benefits may be summarized as follows:

(a) a burial allowance of $300.00 and necessary transportation expenses together with a lump sum payment to the widow of $300.00;

(b) a widow or invalid husband may receive an allowance of $75.00 monthly and if there are children, the allowance is increased by $40.00 for each child under 16 years of age, $50.00 monthly for each child if there is no widow. These allowances are payable to the age of 16 with discretion in the Board to continue the payment beyond that age in certain circumstances, including those cases where the child is continuing his or her education;

(c) where the dependants are persons other than the spouse or children, the Board may pay a monthly allowance not exceeding $100.00 to the deceased workman's dependants.

All these allowances are subject to a maximum equal to the average monthly earnings of the workman and to a minimum which, regardless of all other con-

siderations, in the case of a widow is a monthly allowance of $75.00 together with $40.00 for each child under 16 years of age, but which minimum is not to exceed $150.00 monthly in all.

The widow's allowance (but not those of dependent children) terminates on re-marriage. She then receives a lump sum payment equal to two years' allowance.

Many features which I shall now discuss concerning the benefits mentioned were the subject of submissions at the inquiry.

Burial Expenses

The Ontario statute provides for a $300.00 limit on burial expenses. The limits in other provinces are as follows:

Province	Maximum Limit for Funeral	Maximum Limit for Transporting Body for Burial
Alberta	$250	$100 (only transportation expenses within the province are allowed)
British Columbia	$350	$100 (only transportation expenses within the province are allowed)
Manitoba	$300	Transport expenses included are those within the province and part of expenses if body moved into or from the province.
New Brunswick	$300	$125
Newfoundland	$300	$125
Nova Scotia	$300	$100
Ontario	$300	None specified
Prince Edward Island	$300	$100
Quebec	$600	$150
Saskatchewan	$250	None specified
N.W.T.	$300	$100
Yukon	$250	$100

Representatives of several trade unions have discussed this item and proposals for the increase of the maximum allowance range from $500.00 to $900.00. The Board has provided at my request an estimate of additional annual cost, based upon the experience of the Board in previous years, of increasing the burial allowance to $500.00 and $700.00 as follows:

(a) if the maximum were increased from $300.00 to $500.00—$65,000 or .1 per cent increase in assessment;

(b) if the burial allowance were increased to $700.00, the increased cost would be $130,000 or .2 per cent of assessment.

Recommendation

I have examined the history of this proposal and find that as recently as 1950 the maximum stipulated in the statute was $125.00, which was increased to $200.00 upon the recommendation of Mr. Justice Roach. It would seem that the present provision has been more than overtaken by increased funeral

expenses, and *I therefore recommend that section 37 (1) (a) be amended to increase the maximum from $300.00 to $400.00.*

The United Steelworkers of America in addition to advocating an increase in burial expense allowance, proposed that the provision be broadened to include cremation expenses, and *I recommend that the above-mentioned section be further amended to include expenses for cremation.*

Widow's Allowance

The Ontario Federation of Labour recommended that the lump sum payment payable to the widow should be increased from $300.00 to $500.00, while the Labourers' International Union, which is a member of the Ontario Federation of Labour, has recommended that the allowance be increased to $1,000.00. Two other trade unions have made the same proposal. In other provinces the provisions for such payments to the widow are as follows:

Province	Lump Sum Payment Payable
Alberta	$200
British Columbia	250
Manitoba	300
New Brunswick	200
Newfoundland	200
Nova Scotia	250
Ontario	300
P.E.I.	200
Quebec	300
Saskatchewan	300
N.W.T.	300
Yukon	300

While the lump sum payment to a widow under the Act compares favourably with that made in other provinces evidence before this Commission has convinced me that a substantial increase is necessary. I will recommend as an amendment to subsection 37 (5) that "sum of $300." be deleted from the last line thereof and "sum of $500." be substituted therefor.

With respect to the monthly allowance payable under section 37 of the Act to the widow of the deceased workman, numerous recommendations have been made ranging from a recommendation that the allowance be increased from $75.00 a month, as presently provided, to $125.00 per month, to a recommendation that the widow's allowance be computed with reference to the deceased workman's wages, and the proposals in this connection range from 75 to 100 per cent of earnings.

The Motor Vehicle Manufacturers' Association in its submissions to me has pointed out that while annual earnings of workmen have increased and as a consequence, within the limits prescribed by the Act, allowances to workmen have increased, the provision for the widow has been frozen at $75.00 a month. The Association considers this to be inadequate and appears to believe that the widow's allowance should not be arbitrarily established in the statute at a fixed

amount. The Association, however, simply recommends that the benefit "be increased to an appropriate limit".

An examination of the provisions of the statutes of the other provinces of Canada reveals payments to widows as follows:

Province	Monthly Allowance Payable to the Widow of Deceased	
Alberta	$ 85	
British Columbia	115	
Manitoba	100	
New Brunswick	75	
Newfoundland	75	
Nova Scotia	90	
Ontario	75	
P.E.I.	75	
Quebec	75	
Saskatchewan	110	(drops back to $75 at age 70)
N.W.T.	90	
Yukon	100	

The Ontario statute provided for many years that the widow's allowance should be $50.00 a month, and this limit was not recommended for increase by Mr. Justice Roach. The statute was amended in 1960 to the present level of $75.00 a month.

The Board officials prepared an estimate of the cost of increasing the widow's allowance to $100.00 per month and to $125.00 per month:

TABLE 4

TO $100.00 PER MONTH

		% Increase
Capitalized cost of increasing existing widows' pensions	$15,203,000	
Ten year amortized cost	1,820,000	2.2
Estimated annual additional cost of increasing new widows' pensions	885,000	1.1
		3.3

TABLE 5

TO $125.00 PER MONTH

		% Increase
Capitalized cost of increasing existing widow's pensions	$30,405,000	
Ten year amortized cost	3,641,000	4.4
Estimated annual additional cost of increasing new widows' pensions	1,770,000	2.2
		6.6

Here we encounter the issue in principle as to whether the present employer should be burdened with the cost of increasing benefits awarded in the past. The principle involved is dealt with in detail elsewhere in this report. I shall not

enlarge upon it here but point out that it is not my recommendation, in any increases which I may suggest, that today's employers should be saddled with any additional costs relating to yesterday's accident. Any such costs should be a community responsibility.

I have not asked the Board to estimate the cost of widow's allowances based upon the deceased husband's earnings because such a percentage would have to take into account the decreased family living expenses following the death of the husband. The workman's allowance in the event of injuries is limited to 75 per cent of his earnings and I find it difficult to rationalize the transferral of the widow's allowance from the basis already provided in the statute to that of a percentage of the workman's earnings.

It may be useful to consider the children's allowances at the same time as the widow's allowance. While no specific recommendations have been made for increasing allowances in respect of children as established under section 37 (1) of the statute, a number of submissions have been made, principally by trade unions, relating to the increase of the family compensation generally. It has been pointed out by the Provincial Federation of Ontario Professional Fire Fighters that the total family compensation of $150.00 is too low, but this has reference presumably to the minimum allowance stipulated under section 37 (3) (b). On the other hand, the Labourers' International Union has recommended that the family receive an allowance equal to 100 per cent of the earnings of the deceased workman, subject presumably to the overall limitation of the wage ceiling prescribed by the Act.

The Board made a projection of the cost of increasing the children's pensions from $40.00 a month to $60.00 and $75.00 a month, and also projections of the cost of increasing the combined widow's and children's compensation to 60 per cent and to 75 per cent of the deceased husband's average earnings. The last two projections follow.

TABLE 6

COST OF INCREASING COMBINED WIDOWS' AND CHILDREN'S PENSIONS TO 60% OF AVERAGE EARNINGS OF DECEASED HUSBAND

		% Increase
Estimated annual additional cost.....	$7,674,000	9.3

TABLE 7

COST OF INCREASING COMBINED WIDOWS' AND CHILDREN'S PENSIONS TO 75% OF AVERAGE EARNINGS OF DECEASED HUSBAND

		% Increase
Estimated annual additional cost.....	$10,659,000	13.0

**Subject to continuance of the existing wage ceiling.*

It is unnecessary to do more than observe that from an expense viewpoint the financial position of the family is substantially different after the death of the workman husband. The impact of these provisions can perhaps be illustrated

by considering the situation where the survivors consist of a widow and four children under the age of 16. Assuming for this purpose that the deceased husband's wages calculated in accordance with the statute amounted to $6,000 yearly, his total allowance had he survived the accident would at the maximum be $4,500 a year. The widow under the present provisions would receive only $2,820 per annum or approximately 47 per cent of the deceased husband's average annual income. If the monthly allowance were increased to $125.00 per month for the widow, her total annual allowance for so long as the children were all under the age of 16 years would still be but $3,420, or 57 per cent of the deceased husband's income.

If in the above example children's pension is increased to $50.00 a month, this would mean an additional increase of assessment of three-tenths of 1 per cent (based as in the case of the other projections of the Board, on the 1965 assessments).

Recommendation

Upon consideration of these facts I recommend that the statute be amended to increase in future awards the allowance payable to the widow from $75.00 monthly to $125.00 monthly. I further recommend that the allowance payable to children be increased from $40.00 to $50.00 in the case where a widow survives and from $50.00 to $60.00 where no widow survives, and that the overall maximum in section 37 (3) (b) and (c) be increased to $200.00.

It is also reasonable and I recommend that the sum of $100. as appears in section 37 (1) (f) payable to dependants other than those already dealt with be increased to $150.

In addition I recommend that the lump sum of $300. payable to the widow as provided in section 37 (5) be increased to $500.

FACIAL INJURIES

Under the Act, the right to compensation depends upon a disability which results from injury and reduces the earning capacity of the workman. A submission made on behalf of the United Steelworkers was that compensation should not always be restricted to cases of loss of earnings because, though the injury may not disable the workman from earning full wages, it may "permanently and seriously interfere with his enjoyment of life." This submission was based upon the general principles followed by the courts in the assessment of damages for personal injuries. The principal example to illustrate it was that of disfigurement, particularly in the case of female workers. Under the statute, if the injury does not disable the worker for three days from "earning full wages" she receives no disability allowances under the Act. The second illustration is that of an employee working in a plant where the noise level is consistently high and the worker eventually becomes deaf. The subject of deafness is dealt with by me at another place in this report and will be discussed at that time.

This question has been dealt with by the legislatures of the provinces of British Columbia, Alberta, Manitoba, Nova Scotia, and Prince Edward Island.

Under the Alberta statute, "the Board may, where a workman has been seriously and permanently disfigured about the face or head or otherwise permanently injured, recognize an impairment of earning capacity and may allow lump sums or periodical payments or both as compensation." The British Columbia statute expressly deals with the situation where the disfigurement may not substantially diminish the capacity to earn and in such a case, the Board may nevertheless "recognize an impairment of earning capacity and may allow the lump sum in compensation."

The Manitoba provision also expressly recognizes the possibility that disfigurement may not substantially diminish earning power and authorizes the Board to "recognize the injury as an impairment of earning capacity" and to fix an amount to be payable as full compensation to the workman. The amount may be paid to the workman as a lump sum or by periodical payments.

The Nova Scotia statute does not expressly deal with disfigurement but refers to permanent partial disability injuries not disabling the workman from earning full wages for at least the four days required under the Nova Scotia statute. It is said that this section has been applied to meet the situation which arises in the case of disfigurement. The Prince Edward Island statute follows the same form.

This proposal, representing as it does a departure from the concept of loss of ability to earn full wages for at least a minimum period of time, may be said to be contrary to the basic philosophy of workmen's compensation legislation. Once this base is departed from it becomes difficult in principle to exclude other claims for loss suffered by the workman as a result of an injury such as pain and suffering. On the other hand, disfigurement, particularly facial disfigurement, will perhaps result in a narrowing of the range of employment for women workers and, perhaps to a lesser extent for male workers, which places it in a somewhat different category from pain and suffering. Though the injury may not qualify the workman under section 3, nevertheless the principle upon which section 3 appears to be founded is met, namely that compensation is payable only for impairment of earning capacity. This is undoubtedly the basis for the legislation in the other provinces described above.

This proposal has given me considerable difficulty as it presents some conflict with the basic philosophy of workmen's compensation plans while at the same time coming within the general intention of the Act to compensate a workman for any impairment of earning capacity suffered as a result of an industrial injury. I have, with some hesitation, come to the conclusion that the provisions in the five provinces mentioned above have been sound additions to the legislative scheme and I shall recommend a limited adoption of this principle in the Ontario statute.

The British Columbia provision recognizes more precisely than the others that the accident may not substantially diminish the workman's earnings at the time but nevertheless allows the Board in such a case to recognize an impairment of earning capacity and allow a lump sum compensation. The other statutory provisions, particularly those of Nova Scotia and Prince Edward Island are

less direct and I favour the treatment of this problem as in the British Columbia Act including the restriction that any allowance of the kind suggested should be by a lump sum payment.

I recommend that an amendment be made to section 42 of the Act by adding thereto the following subsection to be known as subsection (5),

"(5) *Notwithstanding the provisions of subsection (1), where in the circumstances the amount which the workman was able to earn before the accident has not been substantially diminished but the workman is seriously and permanently disfigured about the face or head, the Board may recognize an impairment of earning capacity and may allow a lump sum in compensation therefor.*"

INCREASED ALLOWANCES FOR PAST ACCIDENTS

I have in previous pages made recommendations for increases in widows' pensions and children's allowances.

For the purpose of what I have to say here I have had separated in the tables set out below the anticipated increased costs for past accidents from the anticipated increased costs for future accidents.

TABLE 8

PAST ACCIDENTS. ESTIMATED INCREASED COSTS

	Amount	*Percentage* Increase*
Widows' pensions—$75 to $125 per month	$30,405,000	
10 year amortized cost	3,641,000	4.4
Children's allowances—Mother living—		
from $40 to $50 per month	2,001,000	
10 year amortized cost	244,000	0.3
Mother deceased—		
from $50 to $60 per month	62,000	
10 year amortized cost		0.0
Total		4.7

TABLE 9

FUTURE ACCIDENTS—ESTIMATED INCREASED COSTS

	Amount	*Percentage* Cost*
Widows' pensions—$75 to $125 per month	$1,770,000	2.2
Children's Allowances—		
Mother living $40 to $50 per month	374,000	.7
Mother deceased $50 to $60 per month	7,000	.0
Increase in wage ceiling to $7,000	1,800,000	2.2
Total		5.1

*Expressed as a percentage of 1966 accident cost.

It will also be necessary for industry to provide the increased amounts recommended for lump sum payments and for burial allowances.

Increased allowances for widows and children received the support of some employers and was opposed by none. As the need is evident I assume that any change in the Act will be made to apply, as in the past, to present pensioners as well as to future pensioners.

All representatives of industry have urged before me the injustice of imposing upon today's employer the cost of accidents suffered under other employers in other years. To return again to the scheme of the Act, Chief Justice Meredith in his report had this to say:

> "I have therefore made provision in the draft bill to that end by making it the duty of the Board at all times to maintain the accident fund so that with the reserves it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened."

Numerous changes in benefits have been made since the inception of the Act, the most recent of which are those shown in the table reproduced on page 47 (table 20). All were assessed against the industry of the day. Vigorous protests were made to my predecessors, Mr. Justice Middleton and Mr. Justice Roach, both of whom made strong recommendations urging that the distinction between welfare measures and workmen's compensation should be recognized and that the original concept of the Act should be observed. I hold the same strong views and can present them no more forcibly than did Mr. Justice Roach in the following passage.

> "The compensation for which the Act provides must be regarded for what it is and has always been intended to be, namely, a debt owing by industry to the injured workman or his dependants. It is proper to measure that debt at the time of the accident by whatever standard the law then specifies. When the debt is thus measured or evaluated and that measure is paid, industry should thereby be fully released. If, in the course of time, due to changes in our social thinking, or to changed economic conditions, it should be concluded that the standard of measurement should be altered, the debt should not be resurrected and re-measured by some new standard. There should be finality to it. Without such finality industry can never know what its liabilities are. The ownership of industry is constantly changing. The shareholders of an industry in 1950 may be entirely different persons from the shareholders in 1940. In my respectful opinion it is unfair to visit on the shareholders of 1950 a debt created in 1940, and which by the law of the land as it stood in 1940 was completely satisfied. The inequity does not end there. When the amount of compensation in respect of past accidents is increased the assessments to provide that increased compensation are levied on the class in which the industry in which the workman was employed at the date of the accident was placed. The firm by whom the workman was employed may no longer be in that class. Indeed it may have

passed out of existence and in that event the industries within the class are called upon to pay a debt for which they were in no way responsible. Other industries in the meantime may have come into existence and be in the class with the same result.

"The main reason advanced for increasing pensions which have been awarded in respect of past accidents is that due to changed economic conditions they are found to be inadequate. If the workman or his dependants are thus adversely affected by changed economic conditions and require assistance, the burden of providing such assistance should be borne by society as a whole and not by one group of society, in this case, industry. Industry discharged its debt by the standard which the law prescribed when the accident happened and the amount which was then paid was considered adequate. It is the lessening of the purchase value of our currency and the consequent increase in the cost of living that later made it inadequate. That is a condition of general application. It applies to all persons who for any reason are in a position of having to live on an income fixed in past years. The dependants of persons, who, in their lifetime, were never associated with industry are similarly affected. These, if they require assistance, receive it from the state. Since the injured workman or his dependants are in the same position and for the same cause I see no reason why they should be treated differently. Specifically I think it is discriminatory to place the burden of assisting one group on the state and the other on industry alone."

The increased cost of prospective changes which I have recommended and which refer only to future claims amounts to 5.1 per cent. The increased cost if these recommendations were made to apply to allowances for past awards, for those awards only, amounts to 4.7 per cent. To some it might seem that a combined total increase amounting in all to 9.8 per cent would impose no great hardship on industry, and that I have magnified the importance of this issue. I do not feel that I have magnified it since industry at the present time is carrying almost $2,000,000.00 a year for amortized costs resulting from the amendments made between 1960 and 1965. Some industries may succeed in handling their mounting assessments; small industries might be the chief ones to suffer; and so I state my view not only that it is wrong in principle to impose costs for past accidents on today's employers but that I strongly suspect as well it is economically unwise to do so.

While it is obvious that the increased cost of past accidents if not assessed against industry must be borne by society as a whole, the funds for the same would need to be provided from the Consolidated Revenue Fund of the province. It is beyond my authority to recommend that this be done. I accordingly restrict myself to the following recommendation namely,

that if compensation for past accidents is to be brought into line with that recommended in this report for future accidents the cost of the increase should not be assessed against employers coming within the Act.

In one province, British Columbia, following the report of Mr. Justice Tysoe, it has been enacted that pension awards should be tied to the consumer

price index and should automatically increase or decrease as that index varies. The Ontario Federation of Labour advocated in its submissions that this Commission should recommend legislation for this province, similar to that in British Columbia. The matter also received consideration in the brief submitted by the Retail Council of Canada. In the latter brief it was pointed out that an irrevocable step which would tie the computation of pensions to the consumer price index might have a serious effect in the event that wages or payments in place of wages were tied to a severe inflationary spiral. Upon this ground the Council submitted that the present system of periodic government review of compensation rates should continue to be followed. No submissions on this matter other than these were received. The difficulty of providing a satisfactory actuarial assessment of the amount required to fund such pensions is obvious, particularly in view of the wide variations which have recently occurred in the consumer price index. I give no consideration as to how this could be satisfactorily accomplished. I am opposed to such a change on other grounds. I adopt in this the reasons of Mr. Justice Roach in the excerpt from his report which I have quoted above at page 22 and for the same reasons do not recommend any scheme of variable pensions. The injured workman is in no different position from that of the workman who has his retirement pension related to his earnings at the time of retirement or other pensioners who face the necessity of living on fixed incomes for the future. I feel that the most that industry can be asked to do today is to provide future pensions funded upon the basis of today's wages. I have previously stated my opinion that any increased allowances for past awards should not be assessed against today's employer. It is unrealistic to believe that a provision of the kind suggested would be adopted for future pensions without similar provision being made for existing ones. Any scheme of this kind should be adequately supported by government assistance. If this be forthcoming it should, in my opinion, be upon the basis not only that funds from another source than industry be made available for past pensions but also that serious consideration be given as well to assistance in the provision of future pensions. I need not discuss the mechanics of any necessary legislation as this may be readily ascertained by reference to the legislation in British Columbia. For the present I do not believe there should be any change in the present system of periodic review by the legislature of the adequacy of existing pensions and the ability of industry to shoulder any increases. While for the reasons stated I do not recommend a system of variable pensions at all, a change of the kind should not, in any event, be undertaken till it has been possible to assess the effect of the British Columbia legislation over a reasonable period.

In view of my recommendation that industry should not be assessed for any increases in compensation in respect of past accidents *I would also recommend that section 35 (1) which provides that such levies may be made should be deleted in its entirety.*

OVERLAPPING BENEFITS

The coming into existence of the Workmen's Compensation Act in 1915 was, as stated elsewhere, a much needed recognition of the workman's contribution to industry. I have referred elsewhere to the plight of the workman prior to that time and to the ills which the Act was designed to remedy. By it he became

assured of a modest amount of compensation for any injury suffered in the course of his employment. At that time there was very little legislation of the kind that has come to be known as the welfare type. In the intervening years, however, there have been placed on the statute books a great number of welfare measures. These are of two types namely:

(a) social security programmes which provide for payment of predetermined benefits without reference to the personal need of the recipients;

(b) social assistance programmes which provide for aid to residents in needy circumstances.

Such tax supported services are furnished by the federal government, the provincial government and the municipal authorities. I shall not mention the large number of municipal services but to illustrate what I have to say I list hereunder services furnished in Ontario by the federal and provincial authorities.

Federal

Family Allowances Act
Monthly allowances for children under 16.

Old Age Security Act
Monthly pensions of $75.00 to persons 65 and over

Canada Pension Plan
Contributory—Retirement pensions, widows' pensions and disability pensions for all contributors and dependants. The plan covers practically all workers.

Unemployment Insurance Act
This is contributory—equal payments by employers and employees—one-fifth contribution by government.

Vocational Rehabilitation of Disabled Persons Act

Old Age Assistance Act

Blind Persons Act

Disabled Persons Act

Unemployment Assistance Act

Canada Assistance Plan
(Designed to replace Old Age Assistance Act, Blind Persons Act, Disabled Persons Act, and Unemployment Assistance Act)

Hospital Insurance Act

Older Worker Training and Incentive Plan

Auto Workers Transitional Assistance Plan

Provincial

The Old Age Assistance Act

The Blind Persons' Allowances Act

The Disabled Persons' Allowances Act

The Mothers' Allowances Act

The General Welfare Assistance Act

Provides assistance to

(a) dependant fathers

(b) widows and unmarried mothers

(c) unemployed and unemployable persons

(d) persons in hostels

(e) dependent foster children

as well as to others.

The Family Benefits Act 1966

After the passage of The Canada Assistance Act this Act will consolidate The Blind Persons' Allowances Act, The Mothers' and Dependent Children's Act, The Mothers' Allowances Act and The Old Age Assistance Act.

The Vocational Rehabilitation Services Act

The Hospital Services Commission Act

(contributory hospital insurance,)

The Medical Services Insurance Act (OMSIP)

(contributory medical insurance.)

The Elderly Persons' Housing Aid Act

A Number of Other Acts Covering Homes for the Aged and Services of That Kind

While the majority of the above-mentioned Acts conflict in no way with the principles which underlie the Workmen's Compensation Act, a number do and overlapping of benefits results. I shall have occasion to refer to these in more detail later. For the present I wish to emphasize the need for some comprehensive review by the government authorities concerned together with the compensation boards of the provinces in an effort to co-ordinate these measures of relief and to prevent overlapping benefits.

In Great Britain a committee to consider a similar situation—all activities having to do with social insurance—was appointed in 1942 under the chairmanship of Sir William Beveridge (later Lord Beveridge). Included in that review was the organization and administration of workmen's compensation. After the publication of his report the National Insurance (Industrial Injuries) Act, 1946 was enacted. This Act and its amending acts have now been repealed and consolidated in the 1965 Act which bears the same title.

The scheme established is part of a state scheme of national insurance which provides first, contributory industrial injury benefits; secondly, contributory national insurance benefits such as unemployment benefit, sickness benefit widows' benefit, retirement pensions and other such relief; and thirdly, non-contributory allowances. A fourth non-contributory benefit which from 1966 on will replace national assistance which, in turn, replaced poor law relief, is now being integrated with the system. Benefits are paid out of the Industrial Injuries Fund administered by the Ministry of Social Security. The state contributes to the fund and employees and employers make small weekly contributions. Cases where the claimant has had two accidents or has contracted a disease over a long period, perhaps under several employers no longer present any difficulty under this system. Under the system there are three main benefits

—an industrial injury benefit, which is a short term benefit, an industrial disablement benefit, long term, and a death benefit. The injury benefit has something in common with workmen's compensation payments. It consists of weekly payments during total incapacity for work for an injury benefit period not to extend for more than a maximum period of 156 working days following the accident. A disablement pension then comes into effect based upon the degree of disablement as assessed by a medical board. The maximum injury benefit for an adult is approximately $20.00 per week with some additional compensation for dependants.

The workman may bring an action against his employer or a third party and also claim benefits under the Act. The Law Reform (Personal Injuries) Act 1948 provides, however, that when damages are assessed against an employer deduction will be made of one-half the value of any rights which have accrued or probably will accrue to the workman in respect of personal injury, disablement or sickness benefit for the five years beginning when the cause of action occurred.

I do not advance the scheme in Great Britain for the purpose of advocating its adoption here where the workman has his compensation geared to his earnings and where no contribution on his part is required. The amount allowed as a compensation payment in Britain is small and the workman who seeks more than that allowance is still required to resort to the Courts. The great merit of the system in this province is that it has dispensed entirely with litigation.

There is no reason why the approach to the problem here, even if it were constitutionally possible, need be by incorporating workmen's compensation, by legislation, in a wide welfare measure as has been done in Great Britain. I believe, however, that one of two courses should be followed; either the coverage by other governmental programmes of areas which come within the field of workmen's compensation legislation should be reduced or the influence of other government programmes should be recognized in workmen's compensation legislation and the necessary adjustments be made. I should consider the latter method to be the more desirable and, under a federal system, more practical, in which case consideration should be given in particular to The Ontario Hospital Services Act, The Ontario Medical Services Insurance plan, Mothers' and Widows' Allowance legislation, the Old Age Security Act, the Canada Pension Act and the Vocational Rehabilitation Services Act. By way of illustration I shall deal in some detail with the Canada Pension Act and, by mention only, the Old Age Security Act.

Canada Pension Act, 1965

It is mainly by reason of the provisions in this particular Act that I feel called upon to discuss overlapping benefits in this report. By the Act contributions are required from a workman of 1.8 per cent of his earnings above $600.00 per year to a maximum ceiling of $5,000.00 per year and a matching contribution must be made by the employer. I make no attempt here to summarize the details of this plan but point out that benefits under the plan include, in addition to a retirement pension at 65, disability pensions for contributors, death benefits to the estates of deceased contributors, including contributors who have died as a result of industrial accidents, allowances to disabled widows, and a children's benefit programme.

Under the Canada Pension Plan a contributor is considered to be disabled if it is determined, in a manner yet to be prescribed, that he is suffering from a prolonged or severe disability, mental or physical. Disability in the context of this plan would appear to be that state existing when a contributor is incapable of regularly pursuing gainful occupation. The disability pension is a flate rate $25.00 per month plus 75 per cent of the retirement pension. The retirement pension in turn is 25 per cent of the maximum earnings of a workman up to a ceiling of $5,000.00 and is in addition to the $75.00 per month payable under the Old Age Security Act.

Provision is likewise made for death benefits and these of course relate to death from industrial accidents as well as death from other causes. The death benefits are in addition to the widow's pension which is prescribed in terms of a percentage of the contributor's retirement pension. It is also relevant to point out that the widow's pension increases at the age of 65. These provisions are in addition to any personal entitlements of the widow under the pension plan upon her retirement.

The disability provisions of the plan do not come into effect till 1970 and from that time until 1976 they will be paid upon a reduced scale. It is also to be noted that they apply only to cases where there is a severe or prolonged disability, i.e., where the workman is incapable of pursuing regularly any substantially gainful occupation. As an example, a workman earning $6,000.00 or more with a permanent disability, would be entitled, when the plan is in full effect, to receive:

Workman's compensation 75% of $6,000.00.....	$4,500.00
Canada Pension Plan ($25.00 plus 75% of retirement pension of $1,250.00).....	1,237,50
Total.....	5,737.50

Additional benefits are payable to disabled pensioners who have dependent children. They amount to $25.00 per month for each dependant child up to four and $12.50 per month for each additional child. The pensioner with five dependant children would thus be entitled to an additional amount of $1,350.00 in which case he would be receiving in all $7,087.00 per year as compared to his pre-injury income of $6,000.00 per year.

To cite another example, a man on total disability at 65 would be entitled to the following:

Workman's Compensation.....	$4,500.00
Old Age Security.....	900.00
Canada Pension Plan.....	1,237.50
Total.....	$6,637.50

Similar results to the above are apparent upon examination of the other provisions of the Pension Act relating to widows' pensions, death benefits and other relief for which the Act provides.

Up to the present time no province other than Saskatchewan has provided for an adjustment in compensation payments because of benefits payable under welfare legislation. In that province payments under the Old Age Pension Act as it was known, now the Old Age Security Act, are taken into account in payments of allowances to dependants under The Workmen's Compensation Act and compensation is reduced when such benefits are received.

At the inception of The Workmen's Compensation Act in Ontario compensation was made payable upon a basis of 55 per cent of earnings. In his interim report prior to that time Sir William Meredith set out the basis upon which an allowance for compensation of less than full earnings was justified in the following paragraph (page 75)

> "There are three answers to the argument that the difference between the basis of compensation and full earnings constitutes a sufficient contribution from the workman. In the first place the 100 per cent. 'earning capacity' of the workman is usually based arbitrarily upon the wages which the workman was receiving at the time of the injury. But if the workman had not been injured there is no human probability that he would have earned full wages to the time of his death, so that the workman's actual loss cannot be reckoned upon a 100 per cent. basis. In the second place the compensation would place the workman beyond further contingency of loss of earning capacity by reason of injury from other causes or of sickness. The compensation would constitute an assured income not subject to contingencies of sickness, old age, or unemployment and would render insurance against these unnecessary. In the third place the workman is being paid while not producing. Compensation cannot be put on the same basis as wages. Wages are the price paid for service actually rendered. A system which would place the non-productive individual by the accident of incapacity on the same plane as the productive workman would be an economic anomaly. As to this phase of the subject Dr. Zacher has said: 'The limitations of the pension for complete industrial incapacity to two-thirds of the annual earnings, as in the case of most government pensions, is justified by the fact that the time which every workman unavoidably loses through unemployment and the cost of working clothes, tools, etc., must be deducted and that injuries caused by the workman's own fault are compensated with the rest.'"

The principle so clearly stated in the above passage underlies the Act today just as it did in 1915. The Act is not a welfare measure. No matter how meritorious his service the workman who reaches retirement age without accident receives nothing under it. The injured workman, on the other hand, is entitled to be placed for the future in an average financial position having in mind the consideration mentioned in the above passage. As stated elsewhere during his time on compensation he will be relieved of income tax, transportation costs, assessments and other expenses. For these reasons when he receives 75 per cent. of his former earnings his take home pay should not be seriously diminished. If, in addition, he receives the allowances I have mentioned in the above illustrations he will be in receipt of more compensation than by its scheme

the Act was intended to provide. In so far as the additional allowances under the Acts which I have mentioned are made possible by the taxation of industry it would appear reasonable that their effect should be considered when computing compensation payable under The Workmen's Compensation Act.

I have also in mind that as imports increase many industries may be hampered in merchandising their products. It is essential that they be able to compete abroad and to meet competition from imports at home. Both labour and industry must suffer if company production costs brought about by welfare measures are so increased as to cause loss of markets.

Labour representatives will argue that the workman by his labour pays a premium for the right to benefits under the Compensation Act and these should, as a consequence, deserve the same treatment as would proceeds of an insurance policy which the workman had procured at his own expense. On the other hand there have been in the briefs by management submissions that insurance payments, particularly those accruing from company insurance schemes should be considered in compensation payments. Reference is made to section 45 (1) of the Act.

> **"45.** (1) In fixing the amount of compensation to be paid to a workman or his dependants, regard shall be had to any payment, allowance or benefit paid to them by the workman's employer in respect of the workman's accident, including any gratuity or other allowance provided wholly at the expense of the employer."

In various decisions by our courts in negligence actions it has been decided that a benefit from an insurance policy held by a plaintiff is not to be considered when awarding damages. These were referred to and followed by Mr. Justice Roach in reaching his conclusion that insurance benefits are not to be allowed to reduce compensation awards. I shall not repeat the gist of his comment. It is sufficient to say that I am of the same opinion as was he that what a man is entitled to from an insurance policy arranged either privately or through his company is of no concern to the Board. If the workman's company is involved in such a case it is by reason of a voluntary act on the company's part. I consider contributions by the company under the Pension Act and other mandatory statutory programmes to be in a different category for they are compulsory payments. It is for this reason I feel that awards under that Act should be considered in compensation awards.

Recommendations

I would exceed my authority in this Commission were I to make a recommendation regarding an overall review of welfare measures designed among other purposes to consider the place which compensation awards occupy. I can but express a hope that some action may be taken in the near future by the respective governments and compensation boards to review and co-ordinate the activities of the various welfare agencies.

I consider it within my powers, however, in the event that nothing has been done by 1970 along the lines I have mentioned, to make a recommendation in regard to The Workmen's Compensation Act in this province. My recommendation is that section 45 (1) of the Act should be amended at that time to allow the Board, when fixing the amount of compensation, to take into account the provisions of the Old Age Security Act, and one-half the benefits payable under the Pension Act. The amendment I suggest is that there be added to section 45 (1) at that time the following:

"The Board shall also have regard to amounts payable under the Old Age Security Act and to one-half the amounts payable under the Canada Pension Plan."

I have not referred in the above to The Medical Services Insurance Act other than to enumerate it among the provincial statutes. In the event, however, that the current negotiations between the Government of Canada and the provinces result in the institution of a comprehensive universal medical care plan in Ontario the plan and the Workmen's Compensation Act should be jointly scrutinized to avoid unnecessary overlapping in this field as well.

CLAIMS ADJUDICATION

The most important part of the Board's work is in the initial processing and adjudication of claims. Any undue delay in a decision will, in most cases, inflict a hardship on the injured workman and the claims section must, as a consequence, be organized to achieve a rapid decision in the first instance. As an ever increasing volume of claims was developing, a thorough review of the organization was authorized by the present Board and substantial organizational changes followed in 1965. These as well as the manner in which claims are processed are described in the memorandum furnished by the Board which I have included as Appendix D hereto. As indicated in that memorandum some 1,500 to 1,650 new accidents are reported to the Board daily. The result of a June 1966 survey indicated that initial payments in 90 per cent of the claims were made in that month within six to ten working days from the date when the Board received notice of the accident. Such delays as occurred were due to delay in reporting by the doctor or employer or by the necessity for a fuller investigation than was possible by examination of the reports. The evidence points to speed and efficiency at this level, and the fact that no objections were made at any time to this Commission regarding the mechanics of the initial claims procedure must, I would think, be taken by the Board as a high compliment on the manner in which it has succeeded in dealing with its mounting problems.

INVESTIGATION OF ACCIDENTS

As appears from the memorandum (Appendix D) investigation by a claims investigator is considered necessary in but one per cent of the claims. Where an adjudicator requests an investigation it is conducted by an investigator from either the head office or a regional office. When an investigation is to be made the claimant is advised by letter. The claimant has a right to be represented when interviewed during the investigation but it has not been the custom to so notify him in the letter. It was submitted by the Ontario Federation of Labour that he should be so informed. *This would seem reasonable and I would so recommend.*

At the time when the above-mentioned letter goes out to the claimant a similar letter is sent to his employer. Representatives of management have requested that the time of the investigation should be stated in the letter. The chief objection to the implementation of this request is that it would limit an investigator in his freedom of movement designed to allow him to cover the maximum number of cases in the time available to him. *I would not recommend a change.*

The Motor Vehicle Manufacturers' Association in its submissions stated that too few investigations were being carried out and that there should be an increase in the investigating staff. This is an administrative decision of the

Board upon which I am unable to advise on the evidence before me. If it is indicated that cases are slipping by because of failure to investigate as alleged then provision should be made for an adequate staff to investigate. It should not be overlooked that the employer in any instance is in the best position to inform the Board that some wider investigation of a claim arising from an accident is desirable. I have been referred to no case of failure by the Board to so investigate when an investigation has been requested. I am assured by the Board's witness that investigations are conducted in all cases where it is necessary to establish the facts for adjudication and that they are done promptly.

One association urged that no claims should be paid till after notice to the employer. This proposal, if adopted, would result in a substantial slowing of claims adjudication. Claims are not paid till a report from the employer has been received. An initial adjudication need not be final and if subsequent information regarding the claim reaches the employer it can then be furnished to the Board for consideration.

REPORTING OF ACCIDENTS

The provisions of the Act requiring reports of accidents to be made are section 21 for employees and section 115 for employers.

Section 21 (1) prescribes as follows:

> **"21.**—(1) Subject to subsection 5, compensation or medical aid is not payable unless notice of the accident is given as soon as practicable after the happening of it and before the workman has voluntarily left the employment in which he was injured and unless the claim for compensation or medical aid is made within six months from the happening of the accident or, in case of death, within six months from the time of death."

Subsection (5) of the same section permits the Board to relieve against failure to comply with subsection (1). It reads:

> "(5) Failure to give the prescribed notice or to make such claim or any defect or inaccuracy in a notice does not bar the right to compensation if in the opinion of the Board the employer was not prejudiced thereby or, where the compensation is payable out of the accident fund, if the Board is of opinion that the claim for compensation is a just one and ought to be allowed."

Strong representations were made to the Commission by employer interests that there was an increasing tendency on the part of workmen to ignore the provisions of section 21 (1) and not to report accidents to the employer. The increase has been most marked since changes in the Board rules some years ago permitting the workman free choice of doctors. As a result the employer is frequently unable to confirm or investigate the accident and steps to provide against a similar occurrence have to be neglected in the interval. It was said that the employer's first notification of the accident in numerous instances is when he is asked by the Board for a report. The Motor Vehicle Manufacturers' Association reported that in the plant of one of its members over a period of three

months in 1966, 18 per cent of the accidents which became the subject of compensation claims were not reported at the time of the injury and there was no reasonable excuse for the failure. Under these circumstances it is not surprising if doubts have arisen as to whether all accidents for which claims were made in fact occurred. The complaint of the employer in this instance seems fully justified. The average Canadian workman is quite capable of being made to understand that the accident must be reported to his employer as well as to the Board. There will be exceptions, no doubt, as in the case of labourers who speak only, or chiefly, a language other than English. This might provide a reasonable excuse for failure to report. It is only reasonable and just that the employer be given an early opportunity to examine the circumstances in every accident since some wholly fraudulent claims might otherwise find their way to the Board. There should be a concerted effort by the employer, the union where there is one, and by the Board to make known to the workman that reports must be made before leaving the job or as soon thereafter as possible. I am also of the opinion that an amendment to section 21 is necessary to assure that it is done. Such an amendment should provide that when an employee fails to notify his employer within reasonable time of an accident and no adequate explanation therefor is furnished, the Board may deprive him of compensation for any period of time prior to the notice being given.

Of equal importance is the complaint as to the effect being given by the Board to section 21 (5). It is said that this subsection in its present form in effect negatives the provisions of subsection (1) and that the Board is too generous in its treatment of late reports. In this connection the Board filed with the Commission the following comment:

> "A workman jeopardizes his claim if he does not report the accident promptly. It is more difficult for him to establish the details at a later date. When delay in reporting is involved which creates difficulty in granting benefits the Board makes detailed enquiries or investigations to assist the workman to establish his claim. If the enquiry does not produce supporting information the claim would be considered on the evidence already submitted. The Board would consider factors such as the type of disability, his length of employment, the details of his history of onset of disability and reasons for delay in reporting and whether or not the circumstances were reasonable."

The fault I have to find in the practice as stated is that the Board imposes no penalty upon the workman who does not report promptly and who can give no adequate explanation for his failure to do so. It would also appear that the subsection in its present form has, to a substantial degree, the effect of nullifying subsection (1). I believe subsection (5) should be strengthened and shall later recommend a change in its wording. When considering such alteration, however, I have also had in mind the complaint by labour representatives that, on occasion, employers discourage employees from reporting. It goes without saying that an employee should not be penalized for failure to report if his employer had knowledge of the accident. My suggested amendment will provide for this situation.

I am not, on the other hand, in favour of any amendment to subsection (1), as was suggested to the Commission, to provide that the six month period should run "in the case of disablement from the occurrence of the event from which the disablement arose." The purpose of adding the disablement provision to the definition of "accident" in section 1 was obviously to provide for a disability which might not have arisen at a clearly defined time or place. It could equally be to provide for the accident thought to be minor but which at a later time resulted in disablement. To allow such an amendment might work a serious injustice to an injured workman.

A further submission to the Commission has reference to false claims. It was not stated by anyone in his evidence that false claims are being made. It would be difficult to establish how many, if any, arise. The Commission was left, however, to infer from figures provided during the hearing that when so many claims, unreported to the employer, exist, all cannot be bona fide ones. It was suggested that when it is established that a claimant has made a clearly false report and no adequate explanation is offered a penalty should be imposed and that there should be a provision in the Act for this purpose. As no serious objection has been made to this reasonable proposal I shall recommend its adoption.

The provision relating to reporting by employers is section 115, which reads:

"115.—(1) Every employer, within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages or that necessitates medical aid, shall notify the Board in writing of:

(a) the happening of the accident and the nature of it;

(b) the time of its occurrence;

(c) the name and address of the workman;

(d) the place where the accident happened;

(e) the name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury,

and shall in any case furnish such further details and particulars respecting any accident or claim to compensation as the Board may require.

(2) For every contravention of subsection 1, the employer is guilty of an offence and on summary conviction is liable to a fine of not more than $50.

(3) Every employer who makes default in reporting or furnishing particulars of any accident or claim shall, in addition to any other penalty or liability, pay to the Board, if so ordered by the Board, the amount of compensation and medical aid awarded in respect of such accident or claim in accordance with the evidence or information otherwise obtained by the Board."

A preliminary criticism of the above section was of the requirement to report "within three days after the happening of an accident." There is no doubt that the provision is unrealistic in that no employer can report an accident if he has not learned of it or been told that it has occurred. The submission has been made that the words "he learns of" should be inserted following

"after" in the first line so that the time limitation would date from that time rather than from the happening of the accident. This Commission has also given consideration to the penalty provisions of subsections (2) and (3). The penalty in (2) would seem to be inadequate and a more realistic sum should be substituted. A witness for the Board testified that in practice subsection (2) is never used, but that subsection (3) is resorted to without hesitation when an employer defaults without a reasonable excuse. In view of this evidence I am of the opinion either that subsection (2) should be abolished or that an adequate penalty should be substituted for the present one. The latter course will still leave it open for the Board to proceed against the employer under subsections (3) if it sees fit.

Recommendations

(1) *Section 21 (5) should be deleted and the following substituted therefor*

(5) Failure to give the prescribed notice or to make such claim or any defect or inaccuracy in a notice does not bar the right to compensation if

(a) the failure is the result of physical incapacity, error, or other sufficient reason,

(b) the employer had knowledge of the accident or injury at the time of its occurrence, or

(c) neither the Board nor the employer is prejudiced and the Board is of the opinion that special circumstances exist and that the claim for compensation is a just one and ought to be allowed.

(2) *Section 21 of the Act should be amended by adding thereto the following as subsection (6) thereof.*

(6) When a workman fails to notify his employer of an accident within the time required by subsection (1) but qualifies by reason of subsection (5), the Board may deprive him of compensation for any period of time prior to notice to the employer being given.

(3) *The following subsection should be added to section 21.*

(7) A workman who makes a false representation or report in connection with a claim is guilty of an offence and on summary conviction is liable to a fine of $200.00. In addition to the fine imposed the workman shall be required to reimburse the Board, or the individual employer under Schedule 2 for all benefits received by him by reason of the claim having been made.

(4) *Section 115 (1) should be amended by inserting, following the word "after" in the first line, the words, "he learns of" so that the first part of the subsection as amended will read,*

115.—(1) Every employer, within three days after he learns of the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages or that necessitates medical aid, shall notify the Board in writing of,

(5) *Section 115 (2) should be amended by striking from the third line thereof the figure $50 and substituting therefor the sum of $200.00.*

DEFINITION OF "ACCIDENT"

Background

The basic formula covering a workman's entitlement to compensation is to be found in the following sections of the Act:

> "3.—(1) Where in any employment, to which this Part applies, personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer is liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned, except where the injury,
>
> (a) does not disable the workman for a period of at least three calendar days from earning full wages at the work at which he was employed; or
>
> (b) is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.
>
> (2) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment and, where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.
>
> (3) Where compensation for disability is payable, it shall be computed and be payable from the date of the disability.
>
> (4) This section does not apply to a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business."

The onus is on the workman initially to establish (a) that he is a workman within the meaning of the Act, (b) that his employer's business is covered by the Act, (c) that an accident did occur as reported and did arise out of and in the course of employment (or, in the case of disease, that it is an industrial disease or one peculiar to or characteristic of a particular industrial process, trade or occupation) and (d) that the injury or disability is the result of the accident reported.

Until April 3rd, 1963, "accident" was defined in section 1 (1) (a) of the Act as follows:

> "1. (1) In this Act,
>
> (a) 'accident' includes a wilful and intentional act, not being the act of the workman, and a fortuitious event occasioned by a physical or natural cause."

Under this definition, obvious traumatic injuries due to an accident such as a fall, cut or blow could be adjudicated by the Board without difficulty. Adjudication of cases involving injuries arising out of strains or sprains presented problems and the following directive was issued by the Board on December 13th, 1934 as a guide to claims adjudicators when handling claims in the latter class:

"Where some specific strain or incident occurs while a workman is at work under such circumstances as make it appear that an injury has taken place to muscles, tendons or ligaments, thereby causing disability, even in the absence of what is commonly regarded as an accident or a fortuitious event, this may be assumed to be an accident and compensation allowed."

The Board advised that disability claims were adjudicated in accordance with this directive until the amendment of the definition of "accident" which became effective April 3rd, 1963. The present definition, applying to accidents which occurred on and after that date includes disablement arising out of and in the course of employment. It reads:

"1. (1) In this Act,

(a) 'accident' includes,

(i) a wilful and intentional act, not being the act of the workman,

(ii) a chance event occasioned by a physical or natural cause, and

(iii) disablement arising out of and in the course of employment."

The Board advised the Commission that the amendment of 1963 was designed to bring the statute into line with what had become administrative practice in the adjudication of disability claims. A similar statement appears to have been made to the legislature by the Minister who introduced the legislation containing the 1962-63 amendment. In view of these opinions one would have expected no sharp change in the volume of claims allowed for disability (as opposed to traumatic injury) except for normal increases due to increased wages and other considerations which will be discussed. However, as will appear in more detail below, management claims that the amendment of the definition of "accident" to include disability has opened up a flood of new claims which are not clearly work-related and which, as a consequence, should not be the subject of compensation payments. The Board witness admitted that the amendment had resulted in the acceptance of some claims which would formerly have been rejected, as in certain back injury cases, but asserted that the added compensation cost had been small.

The Board directive which was issued after the amendment was made was filed. It reads:

"Entitlement under the amending Act applying to accidents on and happening after the 3rd day of April, 1963, which includes under the definition of accident 'disablement arising out of and in the course of employment' requires that the disablement which the workman suffers must have some causal relationship with the work being performed, that is, it is not sufficient that the disablement comes on during work but rather there must be something about the work which can be considered to have caused a disablement to come on, such as strenuous work, awkward position, unaccustomed strain, or even a movement arising out of the work which it is reasonable to consider has caused the disablement."

In discussing the difference between the 1934 directive and that of 1963 Mr. Kerr, speaking for the Board, pointed out that the former required "some

specific strain or incident" whereas the latter now requires "some causal relationship" i.e. "something about the work." Under the new administrative approach, the claims adjudicator does not necessarily have to find that there was an event or what is commonly regarded as an accident occurring at a point in time, and claims are now allowed for conditions that may have developed over a period of time so long as they are caused by the work. The 1934 directive was somewhat contradictory in its terms in requiring "some specific strain or incident" and later in the same directive providing that compensation could be allowed "even in the absence of what is commonly regarded as an accident or a fortuitous event." This has now been clarified.

The Complaint of Management

A significant number of submissions were received from management taking issue with the definition of "accident" as it now stands. All were concerned with the mounting costs of compensation which they attributed mainly to the cumulative effects of amendments which redefined "accident" and shortened the waiting period.

The submissions relating to the widened definition of "accident" have reference in particular to the alleged alarming increase, since 1963, in back cases for which compensation had been allowed. It was said that more leisure time and leisure work had resulted in more disabled backs. In such cases a degenerative back condition aggravated or brought on by activities not related to employment might be "triggered" by some ordinary movement at work such as bending, reaching or stooping. Such cases should not be compensable but, in fact, many were allowed. The suggestions made were that in all such cases the causal relationship to work should be clearly identified and there should be no broadening of entitlement by some administrative interpretation in conflict with the concept that compensable disability must relate to something inherent in the work. One counsel put it in this way,

> "On that causal connection end I have referred to a number of cases which we had merely to illustrate the point. I am not looking for these to be reopened of course but in those cases it struck us that the Board were applying a causal connection which appeared to us to be a great stretch of the imagination to, for instance, say that the man in merely lifting up a wrench claims that he has injured his back and on that basis compensation was paid to him. A causal connection when it shews that a man is performing a function in which he is over-exerting himself, that type of thing, yes, there is a causal connection between the over-exertion and the disability but . . ."

Employer representatives claimed that, regardless of the Board's stated criterion requiring some causal relationship, the amendment had led to the belief among workmen that any disability which became apparent at work was compensable. The compensation awards by the Board in the last two years tended to confirm this misconception. It was said that the concept of the Act whereby the employer becomes liable without proof of negligence is to be justified only in the case of a true work injury but, by distortion, the Act has

become in the respect mentioned a welfare measure and industry is penalized as a result. It was further stated that the Board's widened interpretation of "accident" is discouraging employers from hiring workmen with inherent or pre-existing disabilities and from rehiring men whose back injury claims have been allowed. Some companies whose safety records had been improving before 1963 complained that these records had been reversed by the increased number of claims allowed in 1964 and 1965. This, they said, disheartens employers and has the effect of undermining their accident prevention efforts, as a field has been introduced in which no amount of supervision or safety effort is of assistance.

Statistical returns in support of the submissions made were filed by the Canadian Manufacturers' Association, The International Nickel Company Limited and the Motor Vehicle Manufacturers' Association. For convenience I shall refer to these bodies as C.M.A., Inco and M.V.M.A. respectively.

The C.M.A. figures covered returns from 19 manufacturing classes between the years 1960 and 1965 shewing the accident frequencies in each class and the total frequency for all classes. The total accident frequency was 13.57 per cent in 1960, 12.71 in 1961, 13.69 in 1962, 16.22 in 1963, 18.85 in 1964, 20.62 in 1965 and subsequent figures filed indicate that it was 21.82 per cent for 1966. It was pointed out that for the year 1965 frequency had increased by 5.8 per cent and in each of the two previous years by substantially more than that amount. The frequency rate which was defined as the number of cases accepted for compensation per million man hours worked, bore little relation to and was substantially higher in every instance than the percentage increase in the work force.

Inco, in extended evidence, supported by case histories, emphasized the objections which I have already summarized. In addition it produced a table (10) shewn on page 40 to establish that in the experience of that company there had been an increase in "non-traumatic" back injury claims since 1962 with a decrease in the percentage of claims disallowed in that period. It has been pointed out by the Board that this table refers to sprains and strains rather than to "non-traumatic" injuries and that in a substantial proportion of these all that was given was medical aid. I shall refer to the table later.

Spokesmen for the United Steelworkers' Union and for the International Union of Mine, Mill and Smelter Workers in answer to the Inco case stated that the increase in back cases was mainly accounted for by (a) the high degree of turnover in the work force in the nickel industry and the employment of unskilled workmen, (b) the increase in the work force, (c) the aging of the work force by reason of union activity since 1945 which has led to job protection through seniority provisions of collective agreements; formerly men over 45 were not hired and many were discharged at or after that age; (d) union campaigns for reporting of injuries, (e) the free choice of doctor after 1963 as opposed to company doctors, and (f) the introduction of heavier equipment, e.g., a new jack-leg drilling machine.

Inco statistics in Table 10 discounted the aging of the work force as a factor and the company, through its counsel, stated that its employment practices and

TABLE 10

THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED

Non-Traumatic Back Cases

Year	No. of Employees at Dec. 31st.	Total Claims Reported on Form 7 including medical aid only (a)	Total Compensation Claims Paid not including medical aid only (b)	Amount of Compensation paid	Claims Rejected (c) No Medical aid	Claims Rejected Medical Aid	Decisions Unknown (d)	% of (c) & (d) of (a)	Incidence of Back Injury to Age: Age 18 to 30 incl. No. of Employees*	Age 18 to 30 incl. No. of Back Claims	Age 18 to 30 incl. %	Age Over 30 No. of Employees*	Age Over 30 No. of Back Claims	Age Over 30 %
1951	14,795	57	3	$9,488.00										
1961	15,853	266	187		43	28	8	29.70	4031	98	2.43	9956	168	1.69
1962	13,273	208	172		22	6	8	17.31	1808	76	4.2	9710	132	1.36
1964	15,651	326	282		13		31	13.50	3766	120	3.19	9972	206	2.06
1965	16,785	556	503	170,231.00**	12	12	29	9.53	4660	275	5.90	9980	281	2.82
1966 (to Sept. 15 approx.)		448												

The Company stated that figures for 1963 were omitted in this statistical presentation because that was the year of the change in definition of "accident."

* Mining and Smelting Division only

** Paid to September, 1966 with 29 pending claims unsettled.

patterns (unskilled labour and turnover) have been unchanged in any major way over the last fifteen years and that the work force has shown only a gradual increase. The company denies that any new machinery is creating unusual risks of injury. It adds that safety steps have been consistently applied and, with mechanization, there is less chance of back strain than before.

The company, in short, attributes the increase in back cases chiefly to the 1963 change in the definition of "accident" and to a more liberal claims adjudication resulting therefrom.

The M.V.M.A. representations were to the effect that the accident benefit costs of its members which had run for a number of years at 35 cents per hundred dollars of assessable payroll had increased in the last six years to a 55 cent cost. The previous 35 cent cost experience the association considered "relatively low" due to safety measures adopted and pursued by the association. Statistics were produced to show the assessment increases between 1962 and 1964 compared to those between 1962 and 1965. According to the figures shewn assessable payrolls of the association members had increased 86 per cent between 1962 and 1964 with benefit payments increasing only 55 per cent during that time. By comparison between 1962 and 1965 benefit payments had gone up by 150 per cent though assessable payrolls had increased only 133 per cent. This disproportionate increase in compensation awards was attributed by the association to the joint effect of the legislative amendments shortening the waiting period and changing the definition of "accident".

The Board in turn produced a series of tables relating to this matter. The first of these tables indicates that the percentage of claims disallowed varied but little between the years 1963 and 1966, 1963 being the year in which the amended definition of "accident" became law. It appears below.

TABLE 11

REJECTED CLAIMS

Year	*Reported Claims*	*Number Rejected*	*Percentage Rejected*
1960	255,961	13,501	5.3
1961	253,169	13,610	5.4
1962	269,536	15,436	5.7
1963	286,627	12,916	4.5
1964	318,331	12,172	3.8
1965	359,353	15,289	4.3
1966	373,554	16,610	4.4

March 7, 1967.

Officials of the Board were emphatic in stating that accident costs to employers had occurred for reasons other than the amended definition of "accident" and asserted that the compensation costs resulting therefrom had in fact been minimal. To substantiate this a review of the cases in the sprain and strain

category had been made taking out those which would previously have been disallowed from those which would have been allowed under the new definition as having a causal origin. The first two tables below, which indicate the percentage increase following the change, result from that review. Those tables which, as indicated, are for the years 1964 and 1966 do not cover all compensation cases in the respective years but cover, I was assured, a large enough number to furnish a sound statistical basis. They are:

TABLE 12

CHANGE IN DEFINITION OF "ACCIDENT"

% increase in number of claims allowed for compensation by reason of new definition of "accident"	1.1%
Estimated annual compensation cost for claims allowed only by reason of new definition of "accident"	$ 488,000.00

1. Figures submitted based on sample of 1964 claims.
2. Total compensation cost for 1964 ..... $50,132,994.47
3. The figure of $488,000 is .97 of Total Compensation Cost.

TABLE 13

Total compensation cost for 1966 ..... $71,352,084.14

1966 ESTIMATES

CHANGE IN DEFINITION OF ACCIDENT

Estimated percentage increase *in number of claims* allowed for compensation by reason of new definition of "accident"	1.1%
Estimated annual compensation cost for claims allowed only by reason of new definition of "accident"	$585,000.00
Percentage of total compensation cost	0.82%

The increased compensation cost in each instance was less than one per cent.

The following table represents the estimated costs for M.V.M.A. rate number 306 for 1964 (Table 14)

TABLE 14

RATE NUMBER 306

		% Increase in Number of Cases
Annual cost of retroactive pension increases	$ 18,091.00	
Estimated annual cost of change in waiting period from 5 to 3 days	3,800.00	9.8
Estimated annual additional cost due to change in definition of "accident"	32,600.00	2.1
Total 1964 Accident Cost for Rate Number 306	$1,003,723.44	

		% of Total Cost for Rate Number 306
Annual cost of retroactive pension increases	$ 18,091.00	1.80
Estimated annual cost of change in waiting period from 5 to 3 days	3,800.00	.38
Estimated annual cost due to change in definition of "accident"	32,600.00	3.25

Since the time of the hearing a further table not reproduced, based upon actual costs in 1966 attributable to the 1963 changes, discloses that the actual additional cost for 1966 is substantially less than that estimated for 1964.

Table 15 shewn hereunder for the class number 076 which includes Inco refers to the estimated increased costs for 1964 by reason of the 1963 change in definition of "accident."

TABLE 15

RATE NUMBER 076

		% Increase in Number of Cases
Estimated annual additional cost due to change in definition of "accident"	$ 38,500.00	3.0
Total 1964 Accident Cost for Rate Number 076	$1,200,513.06	
		% of Total Cost for Rate Number 076
Estimated annual additional cost due to change in definition of "accident"	$ 38,500.00	3.21

It would not appear from the tables above that the increase in accident benefit costs complained of by M.V.M.A. was due to the changed definition of "accident" or that the additional assessments of rate 076, except to a limited degree, can be attributed to that change.

Mr. MacDonald, speaking for the Board, considered the increases shown to be minimal and attributed increased assessment rates to the following rather than to the change of definition of "accident":

(a) increased employment rolls;

(b) increased cost to the Board of medical aid;

(c) increased frequency of accidents;

(d) increased costs due to the amendments of the years 1960, 1963 and 1965.

The overall picture regarding the increase in accident costs is to be found in Table 16 on page 44. Included in the table are the specific costs of the rate groups which include the two organizations that have furnished statistical data in support of their submissions, the M.V.M.A. and Inco.

Support for the contention that increased employment and increased wages account for a substantial increase in compensation costs appears from table 17 on page 45. No information is available as to actual numbers now employed but it is common knowledge that this is a period of full employment.

The increases attributable to mounting costs of medical aid are to be seen in table 18 on page 46.

TABLE 16

INCREASE IN ACCIDENT COSTS, 1960-1965

Year	Compensation			Capitalized Values			Medical Aid			Total		
	Schedule 1	*Rate #306*	*Rate #076*	*Schedule 1*	*Rate #306*	*Rate #076*	*Schedule 1*	*Rate #306*	*Rate #076*	*Schedule 1*	*Rate #306*	*Rate #076*
	$ ¢	$ ¢	$ ¢	$ ¢	$ ¢	$ ¢	$ ¢	$ ¢	$ ¢	$ ¢	$ ¢	$ ¢
1960	20,390,061.66	200,921.15	423,750.38	14,623,584.51	67,603.75	527,046.21	13,285,545.01	138,923.97	241,470.01	48,299,191.18	407,448.87	1,192,266.80
Base Year												
1961	20,366,878.24	218,068.06	450,013.91	16,140,021.25	89,681.50	434,068.31	14,107,089.29	167,059.87	284,574.72	50,613,988.78	474,809.43	1,168,656.94
% Increase	−.1	8.5	6.2	10.4	32.7	−17.6	6.2	20.3	17.9	4.8	16.5	−2.0
1962	21,282,153.78	283,113.21	475,212.63	15,450,676.34	165,806.99	569,580.25	14,616,058.67	198,611.32	252,970.58	51,348,888.79	647,531.52	1,297,763.46
% Increase	4.4	40.9	12.1	5.7	145.3	7.1	10.0	43.0	4.8	6.3	58.9	8.8
1963	23,696,130.89	323,558.12	470,644.08	15,525,167.24	109,741.75	609,632.65	15,870,497.90	230,627.60	292,943.14	55,091,796.03	663,927.47	1,373,219.87
% Increase	16.2	61.0	11.1	6.2	62.3	15.7	19.5	66.0	21.3	14.1	62.9	15.2
1964	28,279,339.73	545,963.91	477,197.33	17,712,215.37	136,534.00	421,967.50	17,690,093.99	321,230.53	301,348.23	63,681,649.09	1,003,728.44	1,200,513.06
% Increase	38.7	171.7	12.6	21.1	102.0	−19.9	33.2	131.2	24.8	31.8	146.3	.7
1965	33,683,446.61	861,015.69	650,194.56	22,571,908.75	322,757.50	657,401.50	20,053,787.68	440,367.65	406,271.22	76,309,143.04	1,624,140.84	1,713,867.28
% Increase	65.2	328.5	53.4	54.4	377.4	24.7	50.9	217.0	68.2	58.0	298.6	43.7

TABLE 17

ASSESSABLE PAYROLL, 1960--1965

Year	*Schedule 1*	*% Increase*	*Rate #306*	*% Increase*	*Rate #076*	*% Increase*
1960	$5,182,830,000		$144,700,000		$105,200,000	
1961	5,075,151,000	−2.1	141,000,000	−2.6	106,300,000	1.0
1962	5,271,590,000	1.7	156,900,000	8.4	100,200,000	−4.8
1963	5,711,870,000	10.2	199,200,000	37.6	91,400,000	−13.1
1964	6,613,409,000	27.6	281,600,000	94.5	104,300,000	−.1
1965	7,479,848,000	44.3	348,100,000	140.5	123,000,000	11.7

TABLE 18
SUMMARY OF MEDICAL AID COSTS, 1960—1965

Type	*1960*	*1961*	*1962*	*1963*	*1964*	*1965*
Doctors	$ 4,693,155.69	$ 4,709,209.03	$ 4,766,081.90	$ 5,524,629.33	$ 6,154,307.95	$ 7,040,414.48
Hospitals	8,772,932.09	9,389,395.12	10,080,774.78	10,666,133.21	11,936,311.32	13,152,107.07
All other	1,497,569.21	1,697,587.35	1,595,061.48	1,591,972.03	1,650,288.41	2,043,061.83
	$14,963,656.99	$15,796,191.50	$16,441,918.16	$17,782,734.57	$19,740,907.68	$22,235,583.38
% Increase		5.6	9.9	18.8	31.9	48.6

The increased frequency of accidents referred to may be seen in the following table:

TABLE 19

FREQUENCY RATES, 1960-1965

Year	*Schedule 1*	*Rate #306*	*Rate #076*
1960	21.7	8.5	37.1
1961	19.2	8.6	30.3
1962	19.8	11.1	27.9
1963	22.3	12.6	28.4
1964	25.4	16.4	33.7
1965-Prov.	26.3	18.4	44.4

This table indicates a general increase of approximately 18 per cent during the years 1963 to 1965. For the M.V.M.A. rate number 306 it was approximately 46 per cent in the three years and for the Inco rate number 076 it was approximately 57 per cent.

Amending acts also were said to be responsible for the increases. They were those of 1960 which increased widows' and children's pensions, of 1963 which again increased existing children's and orphans' pensions, and of July 1st 1965 which brought disability pensions previously awarded on a lesser basis up to 75 per cent of earnings subject to an increased minimum payment. The amortized cost of these changes, as will be seen from table 20, shown on page 48, amount to almost $2,000,000 a year, representing an increase in assessment of approximately 2½ per cent.

Following the representations made on behalf of the M.V.M.A., the Board submitted Table 16 shown on page 44. Summarized, that table discloses that the increases in the M.V.M.A. rate group compensation costs between 1960 and 1965 were greatly in excess of those in industry in general. It indicated as follows:

FROM 1960 TO 1965

	Schedule 1	*Rate #306*	*Rate #076*
Compensation	Up 65.2%	Up 328.5%	Up 53.4%
Capitalized pensions	Up 54.4%	Up 377.4%	Up 24.7%
Medical Aid	Up 50.9%	Up 217%	Up 68.2%
Total	Up 58%	Up 298.6%	Up 43.7%

It was the opinion of Board officials that much higher wages now paid in this industry and a much increased employment together with the considerations previously mentioned accounted for the rising costs. Reference was made to Table 17 shown on page 45 which shows a 140.5 per cent increase in assessable payroll for this industry compared with an overall average of 44.3 per cent for Schedule I employers.

TABLE 20

COST OF INCREASING EXISTING DISABILITY AND DEPENDANCY PENSIONS

Amendment	*Effective Date*	*Schedule*	*Full Capitalized Cost*	*Ten Year Amortized Cost*	*Present Value of Outstanding Amortized Cost at Dec. 31/65*
Standardization of widows' and foster mothers' pensions from $40. or $45. to $50. per month; children's pensions from $10. to $12. per month, and orphans' pensions from $15. to $20. per month	July 1, 1948	1	$3,354,716.00		
		2	487,177.00	Not Applicable	
			$3,841,893.00		
Standardization of widows' and foster mothers' pensions to $75. per month; children's pensions to $25. per month, and orphans' pensions to $35. per month.	Apr. 1, 1960	1	$6,961,183.00		
		2	2,933,089.00		
			$9,894,272.00		
	Payments current costed for the period Apr. 1/60 to Dec. 31.62				
	1960—$462,954.26		1961—$647,481.75	1962—$598,990.50	
	Jan. 1, 1963	1	$5,575,685.00	$ 667,639.	$4,139,200.
Children's pensions increased from $25. to $40. per month, and orphans' pensions from $35. to $50. per month	July 1, 1963	1	$2,334,352.00	$ 274,438.	$1,701,400.
		2	463,810.00		
			$2,798,162.00		
All P.D. pensions brought to a 75% basis, subject to following minimums:	July 1, 1965	1	$8,747,146.86	$1,028,358.	$7,881,100.
		2	1,399,157.29		
			$10,146,304.15		
Minimum pension $100. per month when 100% disabled.					
When earnings between $100.01 and $150., pension at 100% is actual earnings.					
When earnings between $150.00 and $200., pension at 100% is $150.					
When earnings over $200., pension at 100% is 75% of earnings.					

The following table as to wage rates was also submitted:

TABLE 21

AVERAGE WEEKLY WAGE, 1965 SURVEY

Schedule 1	*Rate #306*	*Rate #076*
$88.99	$123.08	$107.43

M.V.M.A. representatives have since notified the Commission that they do not dispute the figures produced by the Board except for the frequency rate calculations which they say are not accurate as the Board figures are calculated from reported man hours worked based upon a formula developed some years ago. The Board's figures, it is said, are substantially below the actual hours worked as reported by association members. No figures were submitted by M.V.M.A. to indicate the man hour statistics to which reference was made. Even accepting such a discrepancy, however, on all the evidence and upon the statistical data submitted it appears plain that the increased compensation cost to M.V.M.A. members has been chiefly due to influences other than those relating to the changes which have been discussed.

Turning to the evidence of Inco as contained in Table 10 on page 40, at the request of the Board information was furnished by the company of the individual cases shewn in the table comprising the total claims, 556, for 1965. The Board investigated all these and has reported that of the 556 claims checked, 339 were for compensation, 192 were for medical aid only and 25 were rejected. The column (b) is accordingly incorrect in showing 503 claims paid. Mr. Osler for Inco has acknowledged this to have been a mistake but emphasizes that the figures under column (a) substantiate his submissions to the Commission. The Board, however, separated among these claims, as it did in tables 12 and 13, those which would have been allowed prior to the definition change mentioned from those which would then have been disallowed. As a result of this research claims officials reported that only 14 of the cases allowed would have been disallowed under the earlier definition and practice. The total cost to April 7, 1967 of the 14 claims had been $2,256.01 which supports the Board in its opinion that Inco's claim that its increased assessments are due to the change in definition is unfounded.

The Board explains Inco's mounting costs in the manner already described. There can be no doubt in the case of this company that there has been a heavy labour turnover in recent years. Testimony on behalf of the United Steelworkers was that 3,355 employees left the service of the company in 1965. At the same time the work force increased by 1,057 and employees with no previous experience in mining were recruited from all parts of Canada. These figures receive support in Table 17, page 45, which shows the decrease in assessable payroll from 1960 to 1963 and the heavy increase thereafter to 1965. Union representatives believe also that the permission to seek treatment from other than company doctors has made a big difference. The union feels that a private doctor is more inclined to

make a favourable report on a claim than is a company doctor. The heavier equipment now in use also was considered to be responsible for back strains and trouble of that kind. This was vigorously denied on behalf of the company for which it was stated that the equipment, while heavier, has supplanted other work methods more likely to cause back trouble than the present ones. Perhaps the readiest explanation of the increase is the vigorous campaign which the union has had in effect in recent years to have its members made aware of their rights to compensation and the need to report what might otherwise be overlooked. In addition the union makes active efforts to assist its members in prosecuting claims when they arise. These considerations do, I believe, account to a large degree for the accident experience of which the company complains.

I have not dealt with the statistics furnished on behalf of the C.M.A. While the increase in the work force shown on the same table with the 1965 statistics furnished is not proportional to the increased accident frequency I believe in this case too that the tables furnished by the Board establish that the increases are not due to the legislative changes mentioned as much as to other causes.

In the result I have reached the conclusion that there is little to be gained by a change back to the definition of "accident" as it existed prior to 1963 for on the evidence before me almost as many of the claims on which C.M.A. and others base their statistics would have been allowed even had there been no change. There is, of course, justification for the change in that it provides compensation for the workman who through long exposure to particularly heavy work or some comparable experience suffers a disability without an accompanying work incident. These complaints from all branches of industry, however, cannot be overlooked and it is my belief that they are to be accounted for by a less critical appraisal of back injury claims than was formerly the case. I recognize the difficulty which claims officers and their medical advisers face where a man whose back injury stems from some outside activity finds occasion to relate it to a sprain received at work. It is not difficult for a workman, I should think, to find confirmation from a fellow employee that a work incident has occurred to justify the claim. The Board must have difficulty in refusing such claims but I feel that a more critical review of back injury cases and of causal relationship if any, to the work would substantially lessen those allowed. It is hard to believe that 96 per cent of all claims made are work-caused. Under the circumstances I can do no more than make a strong recommendation to the Board to the effect I have mentioned. I cannot recommend any change in the Act.

It may be timely to mention at this point the complaint made by employers' representatives that changes in the Act by the legislature occur in many instances without those representing industry having any opportunity to be heard. Certain of the changes such as the one I have been discussing are believed, rightly or wrongly, by employers to have resulted in a situation which operates financially and otherwise to their disadvantage. In some instances it has involved substantial additional imposts. The request for a hearing when new legislation is contemplated is reasonable. Royal Commission enquiries concerning the Act occur only at infrequent times and unless there are to be periodic reviews

changes by legislation in the intervals are inevitable. When these are contemplated it is desirable that all parties be heard and I support the submissions made to that effect.

Before leaving this portion of my report I would refer to two submissions relating to section 3 (2) of the Act. This is the presumption section. One submission was that it should be abolished. The other was that it should not apply to "disability" claims as defined in section 1 (1) (a) (iii) of the Act. The Board made no reply at the hearings to either of these submissions but has since stated by letter that section 3 (2) is not used in the ordinary adjudication of claims. It becomes necessary to use it only in a fatal accident claim or where a workman suffers amnesia following an accident. In such claims it can invariably be established that the man was at work in which case the accident happened *in the course of the* employment. Should unusual circumstances exist, however, as where the accident happened in a portion of a building not under his supervision where a man (e.g. a nightwatchman) might have no right to be, no proof that it arose *out of* his employment might be available and injustice might result. In all claims other than those I have mentioned the Board states there is no need to apply a presumption, as evidence is always available concerning both requirements. The Board does follow, of course, as it is expected to do, the humanitarian practice of giving the workman the benefit of the doubt. As retention of the presumption section appears necessary in the circumstances stated and as the Board makes no use of it otherwise, it does not appear advisable to recommend any change.

WAITING PERIOD

Background

It has been a traditional philosophy in workmen's compensation legislation that there should be some waiting period before entitlement to compensation begins and this has been considered as part of the workman's share or contribution to the burden of industrial accident and the scheme of compensation without proof of fault. The Ontario Act originally provided for a waiting period of seven days. By amendment effective January 1st, 1952 the period was reduced to five days and by a further amendment effective April 3rd, 1963 to three days.

The Board advised the Commission that in administering the Act throughout the years since its inception the word 'days' was always interpreted by the Board as meaning calendar days which would be the ordinary legal interpretation of the word. In 1964, the meaning was made certain by the insertion of the word 'calendar' before the word 'days' in section 3 (1) (a). The section now reads in part as follows:

> **"3.**—(1) Where in any employment to which this Part applies, personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer is liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned, except where the injury,
>
> (a) does not disable the workman for a period of at least three calendar days from earning full wages at the work at which he was employed;"

The Board has interpreted the words 'from earning full wages' as an indication that any day on which the workman is disabled from earning full wages must be counted as part of the three-day waiting period. In the view of the Board, it is not necessary that the workman lose an entire day's work to qualify, merely that his wages for the day be less than full wages because of his injury and on this interpretation counts the day of the accident as one of the days. In the result, the Board will treat as compensable an injury which disables the workman from earning full wages for more than two additional calendar days. The Board's interpretation of the subsection appears to be the correct one but it was challenged in a number of management briefs, the submission being that the intention of the legislation was to have three clear calendar days. It if should be found desirable to require a waiting period of three full calendar days in which no wages are earned, an amendment would be indicated for clarification of the section in question.

While calendar days are used to determine the waiting period, payment of compensation is related to loss of earning capacity. For this reason, compensation is paid only for those days or parts of days on which the workman would otherwise have worked or in which his earnings were reduced because of his injury or disability. A workman whose days off are Saturday and Sunday would not be compensated for them although in this case, Saturday and Sunday would be counted in calculating the waiting period. The example was cited of a man injured at Friday noon and physically disabled on Saturday and Sunday although his plant is always fully closed down for the weekend. Having been certified to return to work on Monday he returned on that day. In the Board's view, this man has been disabled from earning full wages for three calendar days, namely Friday, Saturday and Sunday. Assuming that the employer pays the workman for one-half day's work on Friday he will be entitled to compensation for one-half day's pay in respect of Friday afternoon. If, however, the employer pays the workman for the whole of Friday, on an *ex gratia* basis or by reason of the provisions of a collective agreement, and if the Board is aware of this, then the workman need be paid nothing by way of compensation. This results from the provisions of section 45 (1) of the Act which require that in fixing the amount of compensation to be paid, regard shall be had to any payment or benefit paid by the employer in respect of the workman's accident, including any gratuity or other allowance provided wholly at the expense of the employer. That section further provides that where any sum is deducted from the compensation under subsection (1), it may be paid to the employer out of the accident fund. Thus the employer might, in the example given, receive from the Board the workman's wages for the Friday afternoon if the employer has paid them. In practice the Board does not make this payment to the employer when wages for the day of accident only are involved and as a result the employee in many if not most cases receives compensation plus wages for that day. The fact that a gratuity or other allowance is paid wholly at the expense of the employer for any period of disability is not treated by the Board as eliminating that period from consideration as part of the waiting period because the workman is still "disabled from earning full wages" for that period notwithstanding that he is paid by his employer.

Although the policy of the Board with respect to gratuitous employer payments is as stated above, the Motor Vehicle Manufacturers' Association and other employers submitted that in practice the employee usually receives a double payment in respect of the first day of his disability and also in respect of statutory holidays occurring during his disability and for which he must be paid by the employer pursuant to a collective agreement. According to these management submissions, the Board is seldom aware of gratuitous employer payments and the injured employee profits as a result. This is difficult to understand in view of question 16 on the Workman's Report of Accident, Form 6, which specifically asks "Have you been paid or will you be paid anything by your employer for the period of your disability? If so, give particulars. What, were, or will you be paid for the day you lay off?" Similarly in Form 7, the Employer's Report of Accident, the employer is required to give particulars of any payment, allowance or benefit made, or to be made, for the period of disability at the expense of the accident fund or the employer. It would therefore seem important for the Board to insist on an answer to question 16 on the Workman's Report and check carefully to see that it agrees with the particulars given by the employer on Form 7.

Most employees, employee associations and unions made representations regarding possible changes in the above-mentioned waiting period.

Management Submissions

On the part of various employers submissions were made:

(1) that the waiting period should be analogous to the deductible provision in insurance policies and compensation where allowed should not relate back to the day of injury;

(2) that calendar days in the present section should be amended to read "working days";

(3) that 24 working hours should be substituted for the present waiting period; and

(4) that there should be an increase in the waiting period to four working days.

It was argued in support of these submissions that, with the shorter working week, the provision as to calendar days has become unrealistic. The work week, in many cases, has now been reduced to five days or less and it was considered inequitable that the waiting period should not relate to actual loss of working time; also, that the use of calendar days discriminates against a workman injured early in the week. Many questioned the correctness of the Board's interpretation of the present section and all were of the opinion that, as it stood, it encouraged workmen to stay off work long enough to qualify for compensation, something which might not occur with a longer waiting period. There was general unanimity by management in opposition to eliminating or shortening the waiting period. It was said, though not supported by any evidence, that insurance companies experienced sharply rising costs when the deductible period was shortened.

Union Submissions

The union submissions were that the waiting period should be abolished entirely or reduced to one day, the argument being that the waiting period prevents payment of true compensation to which the workmen should be entitled.

Consideration of Increase in Waiting Period

In turning to consider whether the waiting period should be defined as three clear days or should be increased I am influenced by the experience of the Board following the change in 1963 which reduced the waiting period from five to three days. Mr. MacDonald, its treasurer, furnished the following tables based upon claims allowed during the years 1964 and 1966:

TABLE 22

CHANGE IN WAITING PERIOD FROM 5 TO 3 DAYS, 1964

% increase in number of claims allowed for compensation by reason of change in waiting period from 5 to 3 days	7.4%
Estimated annual compensation cost for claims allowed only by reason of change in waiting period from 5 to 3 days	$147,725.00

TABLE 23

ESTIMATED CHANGE, 1966

Total compensation for 1966	71,352,084
CHANGE IN WAITING PERIOD	
Estimated percentage increase *in number of claims* allowed for compensation by reason of change in waiting period from 5 to 3 days	7.4%
Estimated annual compensation cost for claims allowed only by reason of change in waiting period from 5 to 3 days	$180,000
Percentage of total compensation cost	0.25%

The increased cost shown on Table 22, the first of these, was substantially less than the estimate which the Board had previously made and represented but .2 per cent of the total assessment for the year in question. In the second table the increased cost is substantially the same (.25 per cent). I believe I am entitled to draw the inference from the Board's recent experience that, if a change were now made to restore a five day waiting period, the resulting savings would approximate the .25 per cent which represented the increase found to occur. A stipulation that the time be three working days would not be likely to increase the time beyond the five calendar days prior to 1963 and no greater saving than the above would be expected. Apart entirely from the difficulty of turning back the hands of the clock, so to speak, to the previous requirement I am not satisfied that any substantial saving would result to the fund if any change to increase the present waiting period were made.

Consideration of Decrease in Waiting Period

It will be convenient to consider first the objections raised to any decrease. Those who raised them fear numerous additional claims, increased administrative costs and the magnifying of trivial injuries into compensable claims.

Reference was made also to the philosophy underlying the Act which contemplated as part of the workman's contribution a loss of wages for disablement of less than a stated period.

The Board on its part has filed the following tables projecting results to be anticipated from changes indicated at the head of each table.

TABLE 24

PROPOSED BENEFIT REDUCING WAITING PERIOD TO 1 DAY WITH NO PAYMENT FOR DAY OF ACCIDENT

		% Increase
Estimated reduced annual cost by not paying for day of accident on present 3 day waiting period	$477,000	
Estimated annual cost of change in waiting period from 3 days to 1 day with no payment for day of accident	212,000	
Estimated annual saving	$265,000	.3

TABLE 25

PROPOSED BENEFIT REDUCING WAITING PERIOD TO 1 DAY WITH PAYMENT FOR DAY OF ACCIDENT

		% Increase
Estimated annual additional cost	$794,000	1.0

The amount of $477,000. in Table 24 represents the saving on all claims which would be payable and not only in respect of those affected by a shorter waiting period. The estimated annual cost figure of $212,000. on the other hand refers only to those claims entitled to compensation under a one day period which would not have qualified under a three day period. It would appear by Table 24 that a substantial saving to the Board and employers would result from the change there suggested. An increased number of claims would result but not an increased compensation cost. The administrative cost of the change would, it was stated, be insignificant because the Board has to process all reports of accidents and all medical accounts in any event. The only additional administrative cost would be in sending out cheques for compensation. There is no reason to expect any increase in the number of accidents from such a change. That number would be the same under any provision. It is possible, of course, for a workman to magnify his injury for compensation purposes but I fail to follow the argument that it is more likely to occur with a one day waiting period than with three. Indeed it is probable, and the probability supports the argument for a one day period, that waiting periods encourage malingering. To lower the period would reduce the temptation for treating agencies to extend the period of disability as when a man receives medical attention on Friday and is marked for duty on the following Monday. There can be no doubt that the present provision discriminates between the workman injured on Monday and the one injured on Friday. The first suffers the loss of three days pay, the last of but one. It is considered unlikely that a change to a waiting period of one day without compensation for the day of the accident would inflict hardship upon those who, under the present provision, receive pay for that day as most workmen would receive the balance of that day's wages from the employer in any event.

The provinces of Alberta, Saskatchewan, Manitoba, Newfoundland and Prince Edward Island have all reduced the waiting period to one day with no payment for the day of the accident. I am of the opinion that a similar practice, if followed here would, for the reasons stated above, reduce the burden upon the compensation fund rather than increase it. To allow compensation for the day of the accident, however, would result in a substantial additional burden. To refuse it should, as I have said, seldom result in a workman remaining unpaid for that day. Where it occurs it will be part of the workman's contribution to the scheme.

Recommendations

I would recommend a reduction of the waiting period to one day with no compensation payable for the day of the accident. Section 3 (1) (a) should accordingly be amended to read:

(a) *does not disable the workman for longer than one day from earning full wages at the work at which he was employed; or*

and 3 (3) be amended to read:

(3) *where compensation for disability is payable it shall be computed and be payable from and including the day following the date of disability.*

There should also be an amendment to section 51 (1). The words "three days" in the third line should be deleted and in place thereof the words "more than one day" should be inserted.

RIGHT OF APPEAL AND APPEAL PROCEDURE

Appeal from the Board to the Courts

At the time of the 1949-50 Royal Commission of The Honourable Mr. Justice Roach there was only one serious submission for a right of appeal to the Courts and the Commissioner found general agreement between labour and management groups that no such appeal should be allowed. The situation as it appeared in the briefs and evidence before me has changed very little since that time and many briefs affirmed the view that the privative section of the Act, 72 (1), is necessary and desirable in the interests of speedy and efficient adjudication.

Certain submissions to the contrary should, however, be referred to. The Canadian National, Canadian Pacific, and other railways suggested that an appeal to the Court of Appeal might be provided upon a question of "law or jurisdiction" and that, in any event, the Board itself should have the right to state a case to the Court of Appeal on any matter which, in its opinion, constitutes a question of law or jurisdiction. It was further proposed that on such an appeal, any association representing a class interested in the outcome should be allowed representation and should be heard. Provisions to this general effect appear in the Workmen's Compensation Acts of New Brunswick, Nova Scotia and Prince Edward Island, leave to appeal being required in Nova Scotia and Prince Edward Island, and the railways urged the adoption of a section similar to section 34 of the New Brunswick statute. A like provision is to be found in the Railway Act of Canada.

The Board of Trade of Metropolitan Toronto and the Automotive Transport Association of Ontario asked for a right of appeal to the Courts in disputes involving classifications and assessments of employer groups. The Ontario Forest Industries Association and the Ontario Federation of Construction Associations suggested a right of appeal from the Board to a special court, arbitrator or board of arbitrators. The former association restricted this submission to policy questions only and the latter wished the outside board of arbitrators to be composed of an equal number of employers' and employees' representatives, with or without the addition of a Judge, in accordance with Recommendation No. 23 of the International Labour Convention.

Some individuals whose claims had been denied by the Board after review through its internal appeal procedures, objected that their common law right of access to the courts was infringed by the privative clause.

I am of the opinion that the evidence adduced at the hearings was not such as to indicate any real need for an appeal beyond the Board to the ordinary courts or to any special court or board of arbitrators, or that there is any deficiency in the Board's performance of its adjudicative function which would warrant a departure from the present system. Matters of assessment and classification seldom, if ever, involve questions of law, and would appear to be proper matters for consideration and decision by a Board such as the present one. Virtually all other Board decisions turn on questions of fact which are based upon medical evidence or evidence relating to causation. The number of those advocating an appeal to the courts is few and appears to be far outweighed by the number who express satisfaction with the present system. In these circumstances I feel that the present order should not be disturbed. So far as questions of jurisdiction are concerned, the remedy of certiorari remains available in all cases where the Board denies natural justice, refuses a fair hearing or otherwise exceeds the jurisdiction conferred upon it by the legislation under which it operates.

I have given considerable thought to the advisability of allowing the Board, but not an interested party, to state a case to the Court of Appeal on a question of law and this seemed to me to be the only departure which might have some merit. I have concluded, however, that to do so would open up, even if but slightly, a way back to the courts with resultant delay in the adjudication of claims which, for the reasons I have stated above, would be undesirable at this time.

I recommend no change in the provisions of section 72 of the Act.

Internal Appeal Procedure

The Act makes no specific reference to appeals within the Board but section 72 (3) provides that nothing in subsection 1 (the privative clause) prevents the Board from reconsidering any matter that has been dealt with by it or from rescinding, altering or amending any decision or order previously made. Section 75 (1) provides that any inquiry that the Board deems necessary to make may be made by any member or officer of the Board or by some other person appointed to make the inquiry, and the Board may act upon his report. Presumably relying on these sections, the Board has for some time had a system of appeals within its own structure.

The System Prior to March 1, 1965

The former adjudicative system was three-tiered, consisting of the Claims Department, which considered all claims initially and, upon rejection of a claim, gave only minimal information as to the reason for disallowance; the Review Board, first organized in 1939, which was composed of a senior claims officer and medical experts; and the Board itself, which heard appeals from decisions of the Review Board.

In 1964, 12,172 claims of a total of 318,331 reported were rejected by the Claims Department. The Review Board considered 1,123 rejected claims but held hearings in only 75 of these cases. It changed the initial decision in 238 of the cases reviewed. Detailed reasons for its decisions were not given. The Board itself considered 918 cases in 1964 and its hearings by way of appeal were in some cases in camera, with or without the presence of the workman and even on occasion without notice to him.

At no step of the former system was the rejected claimant formally advised of his rights of appeal.

The New System

It became apparent that the volume of appeals coming to the Board itself had reached unmanageable proportions and that the forecast of economic growth in the province indicated a still greater volume in the future. The Board realized that a new system of appeals was necessary to reduce the burden in this area of its function and in conjunction with other changes in administration, a changed system of review was established. The "new system" which came into effect on March 1st, 1965 had many features considered to be improvements in procedure over the old. It was described in detail in a memorandum submitted by Mr. George R. Poole, then Executive Director of the Board, and is summarized in the structure chart shown on page 59.

A further change is that in all cases of adverse decision by the Claims Department, the workman is now advised by letter of the facts on which the decision is based and the procedure he should follow if he wishes to appeal. I have some further improvements to recommend in the matter of advice to the claimant and other interested parties, as will appear below.

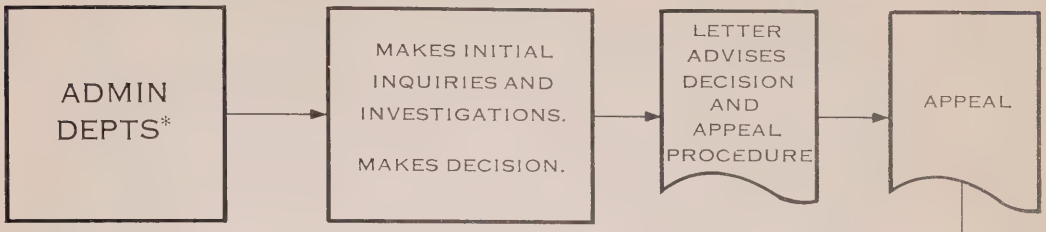
Under the new system, the Review Board is replaced by the Review Committee which is composed of nine senior staff members, including claims, assessment and medical experts, some of whom were members of the former Review Board. The members of the Committee have no departmental responsibilities and review rejected claims on a full-time basis. Cases come to them on the request of the rejected claimant but no hearing is held and the decision is made on the basis of the Committee's own inquiry and investigations, including the consideration of any new evidence submitted to it in writing. The production of new evidence is not, however, a condition of the right of appeal.

The major changes in the appeal structure are the discontinuance of hearings before the Review Committee and the introduction of an intermediate level,

THE WORKMEN'S COMPENSATION BOARD

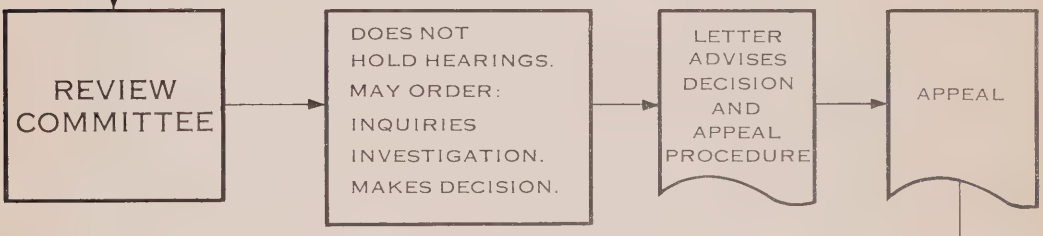
APPEAL STRUCTURE

1ST LEVEL ADMINISTRATIVE DEPARTMENTS

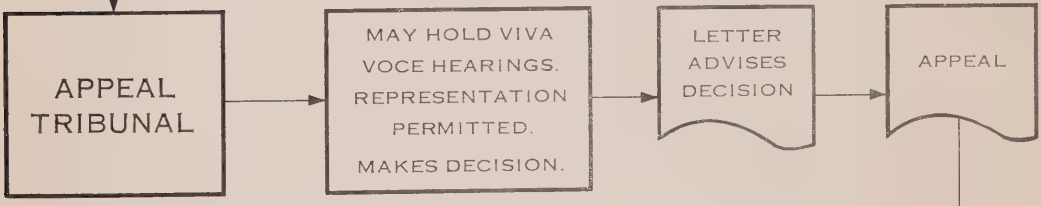


* ASSESSMENT, CLAIMS, MEDICAL & REHABILITATION MATTERS

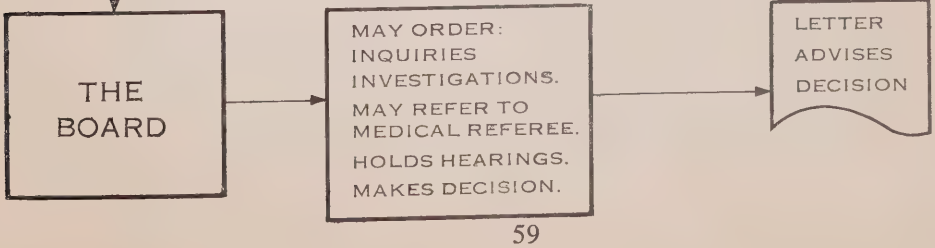
2ND LEVEL REVIEW COMMITTEE



3RD LEVEL APPEAL TRIBUNAL



4TH LEVEL THE BOARD



namely the Appeal Tribunal which hears appeals from decisions of the Review Committee. The Appeal Tribunal consists of three full-time members—a senior claims officer who acts as chairman, a lawyer and a doctor, plus a secretary who acts as an alternate member. Hearings are held throughout the province to meet the convenience of appellants and the evidence is transcribed, as at hearings of the Board, by a licensed reporter.

Decisions of the Appeal Tribunal are subject to appeal to the Board itself which, as under the old system, is the final level of appeal. Board hearings are conducted at the Toronto head office and the Board considers all evidence either given at earlier stages or freshly adduced, including the transcript of the evidence before the Appeal Tribunal.

As may be seen from the above structure chart, there are as before two levels at which the appellant can be heard in person or by his representative. The placing of the Review Committee at the lower level, with no hearing, was done in order to winnow out a certain number of cases and so avoid the necessity of an extended hearing on all appeals.

Procedure at Tribunal and Board hearings is much the same. The adversary system is avoided and the proceedings are informal. Questions are asked of witnesses by the members and cross-examination is not permitted. The appellant is allowed to present evidence and argument to support his case and evidence is received under oath.

The new system has undoubtedly resulted in an easing of the burden of appeals to the Board. Appendix G to this report indicates the change.

Submissions Regarding New Appeal Procedure

Almost without exception the representatives of organized labour stated that they found the new procedures to be unsatisfactory. The Ontario Federation of Labour which has caused a poll to be made of its affiliates (some 1,200 in number, representing about 500,000 employees) reported that those replying were unanimous in expressing dissatisfaction with the new system of processing claims.

The complaints made were:

(1) the loss of labour's former access, directly and informally, to the Vice-Chairman whom labour has been accustomed to consider as the labour representative on the Board;

(2) inability to interview Claims Officers about particular cases prior to proceeding to the review level;

(3) the lack of a hearing before the Review Committee;

(4) undue delay;

(5) undue formality and a bureaucratic and legalistic approach at all levels of claims adjudication and appeal.

In the early days of his tenure of office, the Vice-Chairman was able to deal by telephone and correspondence with enquiries from labour representatives about particular cases, to examine the files and to give speedy reports on any problems that may have been in the way of a prompt decision. As the volume of

cases increased the Vice-Chairman was supplied with one or more special assistants (eventually four in number by 1965) who assisted him in dealing with these personal enquiries. By means of this informal approach, union representatives were often able to obtain information which they could pass on to the workman in order to explain and justify the refusal of his claim or, where there was a delay in adjudication, to discover what report or evidence was needed before a decision could be made. A high level of harmony and co-operation developed between the Board and organized labour because of this method of direct access and informal communication and the Board is, of course, most anxious to retain and encourage this helpful relationship. With the advent of a claims volume of the order of 300,000 to 350,000 per year, however, the work of the Board and its members grew tremendously and, in its judgment, it became impossible to continue to operate with the complete informality and direct communication with claimants that the unions had become accustomed to. The Board realized, furthermore, that in view of its quasi-judicial function it was undesirable that a Board member should discuss and consider a particular case that might later come before the Board for review on appeal.

As a result, with the introduction of the new appeal system, the office of Assistant to the Vice-Chairman was done away with and no Board member now has any such assistant. Instead, a group of administrative officers has been appointed which forms a separate and special unit with the sole purpose of providing information and assistance on a speedy, informal basis, by telephone and letter, for union representatives and others who wish to enquire about the status of individual cases. At present there are four such officers and they are located in close proximity to the Claims Department so that quick reference may be made to claims files and to the claims personnel in charge of them. These officers have all served as assistants to the Vice-Chairman in the past and have had an average of twenty-two years' experience each in claims work. Each ranks above a claims supervisor and is a relatively senior officer of the Board. By direction of the Board, enquiries of the sort previously made to the Vice-Chairman are now referred to one of the administrative officers, leaving all Board members free to perform their duties in the fields of policy-making and determination of appeals at the final level. The unions are making extensive use of the services afforded by the administrative officers and it is hoped that as they become more familiar with these new channels of communication, their concern over the loss of the accustomed personal access to the Vice-Chairman may disappear. Regarding access to these officers, the Board officials assure me that there has been no change of policy and any claimant or employer, or representative of either, may, as before, have communication by telephone, letter or personal interview with one of them during the course of adjudication and without the necessity of launching an appeal. Sheer volume undoubtedly tends to increase the use of written communications and reduce personal contact by word of mouth and in this way, the system may appear to be becoming bureaucratic. This is a problem which pervades the growth of all state administered programmes and I am unable to offer any easy solution. The Board's assurance however that the availability of administrative officers for direct access and discussion remains the same as before should mitigate such a tendency.

Several unions complained that the element of personal contact has also been lost at the Review Committee stage of appeal and requested that personal attendance before the Review Committee should be permitted. In 1964 before the change the Review Board considered 1,123 cases but held hearings in only 75 of these. I suspect therefore that it is not so much the lack of a hearing by the Review Committee that disturbs labour as the changed basis of informal discussion of a case before an appeal is taken, mentioned above. It is however true that the first chance of a formal hearing is now one step removed from the level of claims adjudication and to that extent involves some delay.

One brief suggested that the Review Committee should automatically review every rejected claim, without the need for a request for review from the workman. Counsel for the Railways suggested, on the other hand, that the Review Committee stage might be eliminated. Mr. Poole for the Board pointed out that the Review Committee can handle about ten cases per day and that personal appearance before it would greatly increase the time needed to process cases. To eliminate the Review Committee would take away what appears to me a valuable stage of the process and having in mind the "winnowing out" purpose which it seems to be achieving, I agree with Mr. Poole that the Committee is a worthwhile compromise between automatic review of all rejected claims, on the one hand, and personal attendance before it, on the other. This is another matter that may require review by the Board if the volume of appeals reaching the higher levels increases. In such event it may be forced to consider increasing the number of members on the Review Committee to permit it to function in two sections or to allow hearings at this level but I do not feel that a change is called for at this time.

The complaint that the new system has resulted in much delay in the adjudication of appeals was strenuously urged by several unions. Under both the former and present systems the initial adjudication takes from one to two weeks from the receipt of the necessary reports. After that the time for consideration by the former Review Board might vary depending on whether or not there was a hearing. Mr. Poole said that cases now coming to the Review Committee are usually dealt with in approximately one week or less from the time of the request for review and that nearly all cases at the level of the Appeal Tribunal can be decided within four weeks from the time of appeal. Certainly at the Review Committee level delays should be less with the present procedure than if hearings were held in every case.

The complaint about delays in the system generally was not borne out by any evidence and in the few cases where delays were cited, adequate explanations were given by the Board officers. Very often the delay is caused by a failure on the part of a workman, employer or doctor to report or to provide further information and frequently the appellant himself, or his representative, is found to have requested adjournments to allow further time for preparation. Matters of this kind create an impression that the procedure is slow but they would occur under any system of appeals. I feel that the present time intervals indicate a high standard of efficiency and that complaints of delay are largely unjustified with a possible exception in the case of the Appeal Tribunal. This

body of three members is able to sit on only one case at a time and travels about the province as I have mentioned. The Tribunal needs time for study and consideration of evidence and argument and it would seem that at present the pace is too hectic to allow the members any respite from travelling and hearings and at the same time permit speedy adjudication. I feel that if several new members were added to the Tribunal, two or more panels of members could be operating at once and in this way the elapsed time from the request for hearing might be reduced. I think it would be desirable to cut this time in half from the present four weeks to two weeks. I have not recommended the creation of a second separate tribunal because continuity and consistency of approach might thereby be lost. I should prefer a system similar to that of the appeal side of our provincial Supreme Court where differently constituted groups of judges are selected from one panel for the hearing of each month's cases.

Lastly, there is the complaint about undue formality tending toward a court atmosphere, with strict procedural rules. Of 215 Appeal Tribunal hearings held in the last 10 months of 1965, there were 65 at which the workman was represented by legal counsel, 73 by union representation, 28 by members of Parliament or of the Legislature. In 21 other cases some other representative such as a clergyman, friend or relative assisted the workman and in 28 cases the workman conducted his own appeal. The Ontario Federation of Labour stated that in its experience since March 1st, 1965, there is an ever increasing number of cases in which the workman is represented by a lawyer as opposed to some other kind of adviser.

I would be very much opposed to the appeal structure and procedures becoming overly formal or tending toward an adversary system with cross-examination and the other features of such a system. I believe that this is also the view and policy of the Board. It is, of course, important that, while maintaining a degree of informality, the appeal hearings be conducted on some orderly, organized basis but I urge the Board to continue its efforts to see that in the process of developing an orderly procedure the hearings do not become formidable in the eyes of the workman so that he feels out of place in them or discouraged from presenting his case in person or by a non-legal representative. One union went so far as to urge that no lawyers should be permitted to represent the claimants but I cannot agree to this suggestion.

The Provincial Building and Construction Trades Council of Ontario and the United Steelworkers of America, almost by way of a threat, said that if the appeal procedures did not revert to the former and less formal system, they would be obliged to instruct their members to appeal every rejected claim. They submitted that Ontario is the only province where direct access to Board members is denied and where an Appeal Tribunal is interposed between the review stage and the Board itself. They quoted the Tysoe Report, where it is said that there is no necessity in British Columbia for both a Review Board and an Appeal Tribunal. The situation in British Columbia is much different from our own as the 1965 Annual Report of the British Columbia Board shows a volume of only 94,632 claims and 152 hearings by the Review Board. In view of the degree of industrialization in Ontario, which surpasses that of any other province,

and the statistical evidence of the Ontario volume of cases referred to above, which volume will no doubt continue to increase, I think the new system is the proper one, at least for the immediate future, and the Board cannot be expected to operate with the same informality and direct communication with claimants as before. If the announcement of the unions in question should be carried into action, the Board may have to consider the situation as it develops and, if necessary, review again its appeal procedure.

Notwithstanding the complaints and objections I have outlined, I have come to the conclusion for the reasons indicated that the change to the new appeal system was amply justified and the new structure is well conceived and organized. From the evidence it would appear that in the limited time since it was inaugurated the system has worked reasonably well. As was submitted in some briefs, the system should be given a sufficient opportunity for a thorough testing in practice. *I make no recommendation for radical change in the appeal structure although I shall comment later on certain details which I think should be revised.*

Regulations

Notwithstanding the desirability of appeal informality in the interests of speedy and efficient adjudication, there appeared from the evidence and complaints before me an obvious lack of awareness and understanding by both management and employee groups of the extent of their rights to appeal and the procedures thereon. The fact that the system is relatively new explains this in part. While the need for major change is not indicated, I do feel that it is most important to have the appeal rights and procedures clearly and specifically set forth where they will be readily ascertainable to any person who desires to know his position. In my opinion it is not sufficient to say that this information can be obtained from the Board on request or that it is contained in part in the letters which a rejected claimant receives. This need for certainty of rights could be satisfied by amendment to the statute itself but in the interest of flexibility in case of need for further change, I should favour the use of regulations over any statutory amendment.

I recommend that regulations of the Board be drafted and promulgated immediately pursuant to section 77 of the Act, setting forth appeal rights and procedures.

I do not believe that the publication of regulations should await completion of any trial period for the new system. To deal with the matter by regulation would not preclude future changes and would make it easier for the Board to vary the system if, in the light of experience, it is felt that change is necessary without calling for an amendment to the legislation. In the meantime no one would be in doubt as to his rights.

It may well be that if the appeal burden on the three members of the Board is not sufficiently relaxed by the recent changes and the number of appeals increases to approach its former level, a further change may be necessary. In that event the Board may need to consider a requirement that appeals to it be limited to those where leave to appeal has been obtained from the Board. Leave could be given in cases involving special circumstances or where in the Board's opinion a

matter of policy or principle is involved or where there is new evidence. For the present, however, I feel it is not necessary to make any such recommendation and the system should be given a fair trial.

I now turn to a number of topics of specific complaint regarding appeal procedures.

Grounds of Appeal

The present policy is to advise the rejected claimant by letter that if he desires to appeal he must do so in writing stating his reasons or grounds, but in practice the Board accepts almost any written intimation of a desire to appeal, whether or not reasons are sufficiently stated, as entitling the intended appellant to proceed. In my view, the Board's approach is correct both as to the formal advice to be given to the claimant and the liberal interpretation of his attempt at compliance.

Form letters are used by the Board at the various levels of appeal and in various circumstances to advise the claimant of the next step which he may take in appealing. These letters indicate that when the appeal is submitted, any further particulars or material which would support the claim should be included. This statement has been wrongly interpreted in some quarters as imposing, as a condition of being allowed to appeal, the necessity of having available some new evidence. The Board letters are not so worded but as misunderstanding has arisen they should be revised to make it clear that new evidence is not a pre-requisite.

The Ontario Mining Association and some others felt that appeals should be restricted to those where new evidence is to be adduced but I do not agree and the regulations to be drafted should not, in my view, impose any such limitation.

Advisory Letters

I am in agreement with the present practice of sending letters to rejected claimants and appellants and these should include advice as to the following:

(a) the reasons for refusing any claim or appeal and a brief statement of the findings of fact on which the decision is based;

(b) the next level of appeal that is available;

(c) in the case of notice of rejection of a claim by the Claims Department, the right of the workman and the employer to make submissions and representations in writing to the Review Committee;

(d) in the case of notice of a Review Committee or Appeal Tribunal decision, the right of the workman and the employer to be represented at the Appeal Tribunal or the Board hearing, as the case may be, by legal counsel or by any other adviser or representative but making it clear that it is not essential to be so represented, and the further right of the workman upon request and without charge to obtain the assistance of the Workmen's Adviser, referred to below, in the preparation and presentation of his appeal to the Appeal Tribunal or the Board; also, in the case of notice of a Review Committee decision, the right to obtain,

upon request and without expense, a summary of the information considered by the Committee; the matter of these summaries is discussed more fully below;

(e) the right of the workman or the employer to bring to any hearing of the Appeal Tribunal or the Board itself any witnesses whom the party may desire and who will volunteer themselves for that purpose;

(f) in the case of notice of an Appeal Tribunal decision, the right in the event of further appeal to obtain a transcript of the evidence before the Appeal Tribunal.

Some persons appearing before me were not aware that a transcript could be obtained. The Board of Trade of Metropolitan Toronto proposed that the transcript should form the basis of the evidence on appeal to the Board with the right of the Board to receive new evidence but that the Board hearing should not be a proceeding de novo. In practice the Board already proceeds upon this basis. If no new evidence is forthcoming its deliberations are based upon the transcript of the appeal proceedings which are reported in all but exceptional circumstances. It may, of course, where necessary, refer to medical reports. Other than that the only de novo part of the hearing would be the adducing of new evidence.

The employer is entitled to be made aware of the status of any claim or appeal and to appeal or make written submissions for the purpose of contesting a claim if he chooses to do so and in the past he has not been so informed. He is also entitled to the same rights as the workman under paragraphs (a) to (f) above, except in respect of the Workmen's Adviser, and all employers should receive some periodic notice of their rights. *I also recommend that the practice be instituted of sending the employer of the workman a copy of each advisory letter which is sent to the workman in respect of his rejected claim or appeal.*

It may not be necessary to set out in the appeal regulations all the rights to be referred to in the advisory letters so long as the regulations specify that both workman and employer are to be notified of the right to appeal at each stage.

It was suggested in some management briefs that the practice of advising rejected claimants of their rights to appeal tends to encourage a flood of appeals but this objection cannot be sustained. The purpose of the appeal procedure is to ensure that every claimant and every employer whose rights may be affected by a decision shall have a right to be heard. My report contains no more important recommendation than this, that he be given that entitlement by regulation and that he be notified thereof. If as a result there are more appeals to the Board than it can deal with under the present system of appeals then the appeal procedure and the regulations can be changed to meet the need.

The Labourers' International Union, Local 183, which has a substantial number of members speaking languages other than English submits that the advisory letters should be written in the language of the individual workman, to be ascertained by an additional question on Form 6 (the Workman's Report of Accident). This would cast a heavy administrative burden on the Board and I feel that this matter can properly be left to the Board's good judgment. No

doubt in particular cases where it is known that the claimant cannot read English and would be prejudiced if communications were in that language, every effort will be made to assist him. It is to be noted that interpreters in the workman's language are now provided where needed in interviews.

Subpoenas

The power to issue a subpoena to a witness is found in sections 65 and 75 (2) of the Act. The evidence indicates that this power is rarely exercised and that the Appeal Tribunal has never issued a subpoena or sought Board approval for so doing, notwithstanding certain requests that have been made by interested parties. It is my opinion that in Workmen's Compensation proceedings a subpoena need not be made available to a party as of right. To do so would pose problems. So long as medical reports are to remain confidential and privileged, the right could not be made to apply to doctors were it granted and to grant it in other cases would, I am afraid, lead back to an adversary hearing. In this connection the Ontario Mining Association suggested that the Board should, of its own initiative, make greater use of the subpoena to require the presence of doctors in order to relieve any impression created in the mind of a workman or employer that a doctor was taking sides. The International Nickel Company of Canada Limited felt that the problem of testimony by doctors could be overcome by permitting their evidence to be given in the presence of members and officers of the Board only, if so requested. These considerations can best be left to the discretion of the Board in individual cases.

The fact that the Board rarely, if ever, issues a subpoena in an appeal may indicate that it is being too restrictive in the exercise of its powers but, having made this comment, I feel that the Board must be left to exercise its discretion as to how such matters should be handled.

Workmen's Adviser

Although the letters advising of the right to appeal from the Review Committee to the Appeal Tribunal refer to the availability of a workmen's adviser, this information came as somewhat of a surprise to many of those present at the Commission hearings, no doubt chiefly because the office was instituted only in July, 1966. The present adviser is an employee of the Board and has his quarters at the head office of the Board in Toronto. He is available to workmen for consultation and advice by correspondence or personal interview in connection with rejected claims and the preparation of appeals. He has access to all files and medical reports in the possession of the Board. He may not disclose actual reports to the workman but advises him with regard to the substance thereof. The adviser may not appear at an appeal hearing to represent the workman or to question witnesses. The unions apparently make no use of the adviser and there was no evidence of the extent to which his services are called upon by others.

Bearing in mind that from two-thirds to three-quarters of the workmen in Ontario covered by the Act are not members of a recognized trade union, it seems to me that somewhat greater assistance to workmen would be rendered by

revising the function and method of appointment of the workmen's adviser so that his role would more closely resemble that of the pensions advocate who handles servicemen's claims before the Pension Board. *I recommend that the status of the workmen's adviser be elevated and that the following considerations apply to his appointment and duties:*

(a) *He should be appointed by and be responsible to the Attorney-General and payment of his salary and that of his staff and the expenses of his office should be made by that Department. If possible, his offices should be separate from those of the Board. It is fundamental that he be completely independent of the Board and of industry.*

(b) *He must be a person of high standing who will command the respect and confidence of workmen and of the Board and maintain the independence required of him. It is therefore important that the salary be high enough to attract a competent person to the position. I do not feel it essential, as did Mr. Justice Tysoe in his report, that the adviser be a lawyer and it may be better that he is not, so long as he is well qualified and possesses the attributes I have mentioned.*

(c) *He should be provided with such assistants as the volume of work he is called upon to perform requires.*

(d) *He need not, in my view, have complete access to Board files and reports and it should be sufficient to enable him to assist in the preparation and presentation of an appeal if he has the same degree of access, including the right to the summaries of information referred to below, as has an individual workman. I do not feel therefore that a provision for the type of access to files as is contained in section 76 (3) of the British Columbia statute is required.*

(e) *He should be entitled to be present at and participate in Appeal Tribunal and Board hearings on behalf of the workman to assist him in the presentation of his case.*

(f) *The fact that the adviser's services are available on request and without expense should be stated in the advisory letters to workmen already referred to.*

(g) *The appeal regulations should contain due provision for the foregoing.*

It is not my intention in making this recommendation to create an adversary system where employer will be pitted against employee but rather to encourage the service of free guidance and assistance to workmen so that none may feel at a disadvantage in the face of any formality that may, of necessity, exist in the proceedings before the Appeal Tribunal and the Board.

It is because it is to be expected that a claimant will have more confidence in an independent adviser than in one within the Board's employ, such as is the present adviser, that this recommendation is made. It may be said by industry that this elevation of the status of the workmen's adviser will put employers at a disadvantage. Employer groups contended before me that the Board and its various levels of claims adjudication and appeal tend to be too generous in allowing claims and incline strongly in favour of workmen. The percentage of dis-

allowed claims, approximately 4 per cent, would lend some support to this view. Management further says that the problem of employee relations makes it awkward for employers to participate in appeals in contestation of their employees' claims. I have sympathy with these submissions but it seems to me that the solution must lie in management's hands. Employers have at their disposal the necessary resources and advisers and if they disapprove of the allowance of any particular claim or of any tendency toward excessive liberality on the Board's part, they will have to make the decision as to contesting and appealing claims which they deem to be in their best interests. A great many employers are members of some trade association and it may be that in order to avoid direct confrontation between employer and employee, these associations will choose to provide representatives who can act for employers on appeals.

Examination of Witnesses

The Ontario Mining Association, Rio Algom Mines Limited and The International Nickel Company of Canada Limited suggested that witnesses in appeal proceedings should be examined by a solicitor employed by the Board and that he might also put questions to witnesses, on a limited basis, on behalf of interested parties. It was not the desire of these parties to create an adversary system but rather one approximating that of a coroner's inquest. In view of the recommendations contained in the preceding sections of this report I do not accede to this suggestion. I feel that no claimant will be satisfied with a system where his claims are to be advanced only by an employee of the Board as is suggested and although the submission has merit, the last-mentioned difficulty must exclude it from favourable consideration.

The Labourers' International Union and the Automotive Transport Association of Ontario asked for the right to cross-examine witnesses, but as previously stated, I do not think this would be a desirable change. As a judge I have reservations about denying cross-examination but the system seems to work well without it and with the workmen's adviser and possible industry representation at hearings, to go further and allow cross-examination would bring us to an adversary system which all agree is undesirable. This is not to say that the parties to an appeal should be denied the right to draw to the attention of the Appeal Tribunal or the Board any discrepancies between statements of the claimant or witnesses made contemporaneously with or soon after the accident and oral testimony given at a later time at the appeal level. As was pointed out by Rio Algom Mines Limited, the former should, in general, be given credence in preference to the latter where there is any inconsistency.

Members of Appeal Bodies

The Provincial Building and Construction Trades Council and the Labourers' International Union, among others, asked for a recommendation that the members of the Appeal Tribunal and Review Committee include representatives of labour. To adopt this would, of course, necessitate equal representation from management and would, in my view, destroy the impartiality and independence which it is sought to achieve in the membership of these tribunals. Though appeals are from Board decisions the Board is not an interested party in the

ordinary sense of the word. Its servants seek only to interpret entitlement upon the basis which the Act allows. The submission that labour members be included on the appeal tribunals within the Board did not appear to be based on any indication of prejudice in the adjudication of past appeals. On the contrary, references to the Board were usually complimentary. Judges must be impartial and there is no reason why servants of the Board should be otherwise. The placing of representatives of interested groups on these bodies would not, in my opinion, improve the impartiality with which each case must be judged. Elsewhere in this report I have commented at some length on a similar proposal regarding membership in the Board itself and the comments there made are equally applicable here. *I would recommend against appointments of those representing any particular interest to appeal bodies within the Board.*

Payment of Compensation Pending Appeals by Employers

The Automotive Transport Association of Ontario submitted that the Board's practice of paying compensation notwithstanding that an appeal has been lodged by an employer creates inequities. At present, if the employer's appeal is allowed, the workman can be obliged to repay the amounts received but the difficulties of recovery are obvious. As a result the employer group may be charged with payment of compensation when there is no entitlement. I agree that the result works an injustice on employers and I think that until the question of entitlement is finally decided, there should be no payment of compensation and the hearing of appeals brought by employers should be expedited as much as possible so that the outcome will be known at the earliest opportunity.

Appeals from Assessments, Ratings and Classifications

Employers should be made aware by letter in the case of disputes involving these matters that the ordinary appeal procedure within the Board is available to them. The evidence shows that the membership of the various appeal bodies includes persons professionally qualified to deal with such matters and that appeals are heard by them in the ordinary way.

Time Limit for Appeals

Rio Algom Mines Limited submitted that there should be a time limit of three months from the rejection of a claim or the dismissal of appeal in which to take an appeal or further appeal. Provided that the claimant is advised of his rights as I have recommended, I think this suggestion has considerable merit and would recommend the inclusion of some such time limit in the appeal regulations. Since the introduction of the new appeal procedure the Board has been liberal in allowing old claims to be brought forward once again. These reviews should not be allowed to go on indefinitely. This is not to say that a claim should not be re-opened where there is some new evidence or change of condition or of other circumstances, but in the absence of some such special consideration a time limit for appeal, imposed by regulation, might now be in order. *I recommend that there be a regulation setting forth the requirement that any appeal must be made within three months unless by reason of new evidence or other special condition the Board in its discretion allows leave to appeal.*

Access to Board Files and Medical Reports

Section 97 (1) of the Act reads as follows:

"**97.**—(1) No officer of the Board and no person authorized to make an inquiry under this Part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the Board, any information obtained by him or that has come to his knowledge in making or in connection with an inspection or inquiry under this Part."

Acting under the authority conferred by this section the Board refuses to make its files available for inspection to a claimant, his representative or the employer.

Strong objection to this was taken before the Commission by labour unions, a number of individual claimants, and by certain associations representing industry. All claimed to be prejudiced in the preparation and presentation of appeals by the Board's refusal to permit complete access to its files, particularly to the various medical reports upon which claims' adjudication has been based. The Ontario Medical Association representing the doctors of Ontario as strongly supports the practice of the Board.

The Board does if requested make available to the claimants' own physician any specialists' reports relating to the case being treated. In an effort, however, to meet the criticism made above and as a compromise between those who make it and the views of the medical profession the Board in 1965 adopted the practice of providing to any claimant wishing to appeal, a summary of the information including medical opinions upon which its decision upon a claim had been based. I have inspected the summaries furnished in a number of cases, and in each instance, the summary appears both full and accurate. Each summary is prepared by the staff of the Review Committee and, prior to issue to the claimant, receives the approval of members of that Committee who sat on the review. The claimant is advised by letter that such a summary is available on request and when demand is made the summary is forwarded to him well in advance of the hearing to permit adequate time for preparation of his appeal. Summaries refer to statements and reports to the Board by the employer, the workman, the attending physician and, where obtained, of witnesses, consulting physicians, surgeons, and radiologists. Each concludes with a statement of the Review Committee's findings and the reasons therefor. Medical terminology is used to describe conditions and treatment but not so as to exclude a description in lay language. One such summary appears as Appendix E to this report.

The union representatives complained that these summaries were not sufficient, partly because they contain medical language difficult for the layman to understand but chiefly because the furnishing of a summary falls short of that which is felt to be the right of the claimant, namely, to have made available when presenting his appeal the exact information upon which the claim has been decided.

Under an adversary system, which this is not, disclosure would be required. If directed here it would tend to open the door, partly at least, to the system to which all say they are opposed. The claimant would query the opinions expressed

in the medical reports and management's representative in turn might seek to answer such queries or might himself object to the medical opinions expressed. As matters stand at present there is, as between the Board and the medical profession, the friendliest of relations. The lack of confidence and co-operation in British Columbia, referred to in the report of Mr. Justice Tysoe, is not experienced here. All members of the medical profession, I think it is safe to say, are overworked yet they appear to render their services willingly at the request of the Board and to accept therefor the minimum fee provided by the schedule of fees of the Ontario Medical Association. The doctor practising in a "company town" or any doctor, for that matter, might be less than frank in his report to medical confreres on the Board if he knew that his report was later to be furnished to the patient. To a lesser extent the same applies to the specialist who might resent being exposed to a possible subsequent controversy with the person whom he had examined or with that person's lawyer. The result would be twofold—a report that was less than complete and a possible reluctance by physicians to accept compensation cases. Either result would be unfortunate. It would seem to me that these considerations outweigh the reasons advanced for change.

Unfortunately many claimants look upon the Board as if it were an adversary and opposed to paying claims. Some talked of the Board seeking to preserve its fund. I am satisfied on this score that the Board sits judicially and seeks only to weigh the scales between the claimant and those who provide the funds for payment. It can for itself have no concern about the amount awarded. While it is true that the Board has a fund, it can hardly be influenced thereby as current payments will be taken care of by an assessment against industry rather than from the fund. A substantial support for this view is that the Board reports, as I have mentioned before, that about 96 per cent of all claims are paid, which must indicate that claimants are being given every possible consideration.

In its brief the Ontario Medical Association extended its disapproval to the furnishing even of summaries. I would not give effect to that submission. The present practice appears to furnish a suitable compromise in these matters. It should also be pointed out that any claimant is free to consult on his own whatever professional advice he chooses. Reports from such sources can be adduced by the claimant and considered on appeal. *The reasons which lead me to recommend against the production of medical reports do not seem to apply to x-ray plates and reports or to reports on post-mortem examinations. They should be made available upon request of the claimant. With these exceptions I recommend no change in the present practice.*

I should mention that submissions were made to the Commission on behalf of Mrs. S. Ostrowski that refusal of the Board to disclose medical reports in her case was causing her prejudice in an action for malpractice against a doctor who had performed an operation upon her in 1963 for a condition resulting from a compensable accident in 1952. Enquiry by this Commission indicates that x-rays and x-ray reports will be made available to her and that she is aware of the names of the doctors from whom treatment was received. With this information and independent medical advice she should be able to prosecute her case. It will be for the Court to decide what productions may be had. The

privilege attaching to reports in the hands of the Board does not extend to the doctors concerned. Such being the case the Board cannot be expected to release these reports. This case presents an unusual situation which will occur but rarely. I do not feel that it justifies any recommendation on my part altering the present practice.

The case mentioned raises the point, however, emphasized by the Ontario Medical Association, namely the necessity for giving protection to the doctor if reports are to be made available. Should my recommendation regarding medical reports not meet with approval and should they be made available at some time in the future I cannot emphasize too strongly that accompanying legislation at that time should give protection to the physician by making his report privileged. A failure to do so would, I believe, seriously handicap the Board in securing medical services for its injured claimants.

Review of Compensation

Section 25 of the Act provides as follows:

> **"25.** Any weekly or other periodical payment to a workman may be reviewed at the request of the employer or of the workman, if the compensation is payable by the employer individually, or, if the compensation is payable out of the accident fund, of the Board's own motion or at the request of the workman and on such review the Board may put an end to or diminish or increase such payment to a sum not beyond the maximum hereinafter prescribed."

It is to be noted that either a workman or employer under Schedule 2 may apply for review of a previous award of compensation but if the compensation is payable out of the accident fund the right to so apply is restricted to the workman. Employers contributing to the accident fund submit that they should be free, as the workman is, to request that a review be held and I am in accord with this submission. I recommend that section 25 be amended by having inserted in the sixth line thereof after the word "workman" the following words "or his employer."

SMALL CLAIMS

The Motor Vehicle Manufacturers' Association in its brief criticized the manner in which small claims were handled by the Board. It was the impression of this Association based upon a letter from the Board in a particular case that no adequate investigation of small claims is made.

A witness for the Board testified that all claims for compensation, large and small, are handled in the same way. The Board must satisfy itself that a claimant is a workman under the Act and that the accident happened out of and in the course of employment. Information in all cases is obtained in the first instance by correspondence. If it is then considered that an investigation is necessary a field claims investigator is sent out. The size of the claim does not influence the decision. In a certain number of claims a medical opinion must also be secured to determine the causal relationship of the condition diagnosed. This witness was

emphatic in stating that there was no practice of paying small claims without investigation. When medical aid claims with no lost time are involved the practice, he stated, is different in degree only. These claims are all adjudicated and are not paid automatically. Being small, however, the extent of the enquiry by the Board is limited and the benefit of the doubt, given to the workman, is frequently the deciding factor.

I cannot find fault with the Board's practice in the above matters. It is always possible that a minor injury might later prove to be the source of a larger claim but the percentage of such cases would not seem to justify a wider investigation of medical aid claims. In the light of the high volume of cases it would be impractical for the Board to change its policy in this regard and the cost could not be justified. The employer, I need hardly add, is in perhaps the best position to report to the Board if an investigation is called for and he may always request that one be made. There was no evidence of any request for investigation having been refused.

With regard to the one case where it was alleged there had not been adequate investigation, examination of the record did not substantiate that allegation. On the whole I must reach the conclusion that investigations by the Board of small claims are as full as can be expected under the circumstances mentioned.

CASUAL LABOUR AND RESCUE WORKERS

Section 3 (4) of the Act provides that section 3—which is the general provision entitling the workman to compensation—"does not apply to a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business". The word "casual" is not defined in the Act but there should be little doubt as to its meaning. Submissions under this topic were made by the International Union of Mine, Mill and Smelter Workers and International Labourers' Union that any workman, regardless of the casual nature of his employment, should be covered by the Act and that the exclusion under section 3 (4) should be abolished.

Mr. Kerr, a Board witness, explained the practice of the Board. He pointed out that no casual labourer is denied the protection of the Act unless two conditions are present, namely, that the employment is of a casual nature *and* that the employment is otherwise than for the purposes of the employer's trade or business. If the workman is employed for the purposes of the employer's business and the master and servant relationship exists, the workman will be covered regardless of the length of time he works. If the workman is not under the control and supervision of the employer he will be considered as an independent contractor or operator and will be denied coverage on the basis that there was no master-servant relationship, regardless of whether his work is of a casual nature or not. He pointed out that the section is intended to exclude a casual labourer who is hired by the owner of a business to perform some job at the owner's home, such as cutting the grass, the work not being connected with the employer's business. Provision is made in section 90a for bringing any independent operator, upon request, under the provisions of the Act.

I felt during the discussion that there was some misconception regarding the exact effect of section 3 (4). Mr. Kerr's explanation should have cleared it up. At present any workman under company orders is entitled to claim compensation if injured. I do not think that the employer should be asked to go further than this. It is the responsibility of the person carrying out an operation which is not directed or controlled by the company to arrange for his own coverage under section 90a. I believe, however, that the definition of workman in section 1 (1) (u) of the Act might be clarified by substituting for the word "works" in the second line the words "is employed." It would add to simplification and clarity if section 3 (4) were deleted and its terms were added to the last portion of section 1 (1) (u). Recommendation of these changes will follow.

Several associations made representations that certain provisions of the Act should be enlarged to cover persons engaged in rescue work, in fighting fires when called out under The Fires Extinguishment Act, R.S.O. 1960 Ch. 139, and in attempting to preserve life or property in the case of an accident, fire, explosion or emergency of the kind. It appears that those injured fighting fires under The Fires Extinguishment Act are in fact compensated now as though they were employees of the Crown but no legislative authority for this is spelled out in the Act. In four of the other provinces the definition of "workman" has been extended to cover one or more of the above categories. I believe that provision should be made, with some restrictions, in the Act for those injured in the ways that have been mentioned. Section 122 already provides for those injured in rendering assistance to police officers—an additional section may be added to provide for those called out under The Fires Extinguishment Act and an amendment to the definition of "workman" in section 1 (1) (u) can be made to provide for the others.

Recommendations

Section 122 should be amended by adding after the word "peace" in the fourth line thereof the following words—"and every person who assists in fighting a fire by reason of an order made under The Fires Extinguishment Act." The section as amended will then read:

> **122.** For the purposes of this Act, every person who under clause (b) of section 110 of the Criminal Code (Canada) is required to assist in arresting any person or in preserving the peace and every person who assists in fighting a fire by reason of an order made under The Fires Extinguishment Act shall be deemed to be an employee of the Crown in right of Ontario and his average earnings shall be deemed to be the same in amount as his average earnings at his regular employment but in any case not less than $30. per week and at no higher rate of earnings than the maximum wage established under section 44 (1).

Section 3 (4) should be deleted.

Section 1 (1) (u) in turn should be amended by striking out the word "works" in the second line thereof and substituting therefor the words "is employed" and by inserting after the word "brigade" in the sixth line the following

"and any person while actually engaged in rescuing or protecting life or property in or about the industry in which the person is employed and any person while actually engaged within a mine in rescuing or protecting life or property endangered by an accident or explosion even though he is not an employee of the industry concerned" and by adding at the end of the said subsection the words "or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business

The subsection as amended would read:

1. (1) (u) "workman" includes a person who has entered into or is employed under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes a learner and a member of a municipal fire brigade and any person while actually engaged in rescuing or protecting life or property in or about the industry in which the person is employed, and any person while actually engaged within a mine in rescuing or protecting life or property endangered by an accident or explosion even though he is not an employee of the industry concerned, and includes an independent operator admitted by the board under section 90a, but where used in Part 1 does not include an outworker or an executive officer of a corporation or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business.

THE BOARD

COMPOSITION OF THE BOARD

By section 54 of the Act the Board is to be composed of three members appointed by the Lieutenant Governor in Council. There is no provision that any member of the Board be appointed from the ranks of labour, management, the medical profession, the legal profession or any other particular section of the community. The present chairman is a lawyer, the vice-chairman was appointed from the ranks of labour and the third member is a medical man.

Submissions have been made that as there is now on the Board a "labour representative" there should also be appointed to the Board an "employer representative" and, if necessary, the number of members should be increased for that purpose. There was a submission from one association that there should be a representative of management from the construction industry on the Board. In no case did this amount to a criticism of the present vice-chairman, the "labour member"; on the contrary there appeared to be agreement that he acts judicially and with fairness in fulfilling his duties. If the labour member of the Board is to function as the "labour representative" rather than as a judicial officer appointed from the labour ranks, the point is well taken that there should be an "employers' representative" on the Board as well. The previous membership of the Board comprised one member from labour, one from management and a doctor. There is nothing to indicate, however, that the decisions of the members of that Board, any more than those of the present one, were affected by their former activities. For many years however labour representatives acting for their members who were claiming compensation had sought out the man on the Board, whom they knew, when they were seeking information or action on such claims. In practice this achieved much in the way of understanding and I believe that the present good relations between the Board and the labour organizations are to a large extent due to the efforts of the present vice-chairman.

When the former review board was replaced by two new levels of appeal in 1965, however, access to any member of the Board for the purpose of discussing individual claims was terminated. This has resulted in vigorous protests being made to this Commission by labour representatives. On the other hand it is probably due to the previous practice whereby the labour member was thought of by many as the "labour representative" that submissions are now made on behalf of management for the appointment of a Board member from among the employers.

I must say at once that while the off-the-record discussions I have mentioned by Board members with claimants' representatives may, by reason of the character of the members in question, have led to little distrust of Board decisions it is on principle quite wrong for any judge to discuss beforehand with a claimant the matter of his claim. Those sitting on the Board comprise the final court of appeal. Each member sits in a judicial capacity and, by reason of his office can represent no interest. He must act in reaching a decision without fear or favour and upon the evidence alone which is before him. He is as much a judge as is any judge in an Ontario Court.

If members of the Board understand this to be their function when adjudicating claims, and I believe they do, it matters not from whence comes the appointee to the post. The only justification for having a regular appointee from one source such as labour is that once appointed he may be able to offer help and advice by reason of his background and knowledge as a workman. The same may be said of the medical representative. Most, if not all appeals involve decisions on the medical evidence which justifies his appointment. The same argument couldobe advanced to justify the appointment of an employer member. Were the Buard to be increased in number those responsible for the appointment would no do bt take it into consideration. I do not propose, however, to recommend an increase in Board membership at the present time. I rest my decision as to membership upon the ground that as Board members are not to be considered to represent any faction or group the present Board can carry out its judicial functions as well as any other. While one's decisions may indeed by influenced in some degree by one's background, it can hardly be said that a Board composed of one from labour and two from the professions is weighted in favour of the labour element.

I might add as a footnote to the above that there can be no objection to a member of the Board discussing with representatives of labour, management or others, problems which they may wish to bring before the Board, so long as they do not discuss individual claims. I understand that this is the present practice of the Board.

The question of the size of the Board requires further consideration. As has been said elsewhere the change in appeal procedure in 1965 was made because the vastly increased volume of claims with which the Board had to deal made reorganization necessary and members of the Board, required as they were to spend long hours on hearing appeals, were not in a position to give the necessary attention and consideration to other important administrative problems and questions of policy. This Commission has been informed that the interposition of an intermediate level of appeal between the review committee and the Board has had the effect of reducing to a minimum the number of appeals to the Board itself. As a result, unless this situation changes and the Board has again to spend much of its time on appeal hearings, the three member Board as it now exists is as well able to perform the functions required of it as would a larger Board. Had the change in organization not occurred it would indeed have been wise to increase the membership to lighten the load on individual members. As it is I do not consider this to be necessary. Should the situation, as I have outlined it,

change, consideration can then be given, without the necessity of a Royal Commission, to an increase in membership.

The general jurisdiction of the Board is outlined in section 72. It has an exclusive jurisdiction thereunder to examine into, hear and determine all matters and questions arising under Part I of the Act. Included in such matters are the adjudication of claims by workmen and decisions as to classifications for employers. The Board, as defined in the Act, is the Workmen's Compensation Board which is a corporate body of the three appointed members. It can, and does, function only by delegating many of its powers of adjudication to members of its administrative staff. No such power of delegation is at present given by the section in question and I am of the opinion that the necessary practice of the Board should be regularized by an amendment to section 75 permitting the Board to delegate its powers of adjudication within its staff.

I accordingly recommend

(1) *That no change be made in the present number or composition of the Board;*

(2) *That there be added as an amendment to section 72 of the Act the following subsection*

72 (5) The Board shall have power to delegate its powers of adjudication and review to such members of its staff as it shall designate.

INVESTMENT OF BOARD FUNDS

Under section 84 of the Workmen's Compensation Act of Ontario, the Board is directed to maintain at all times "the accident fund so that with the reserves, exclusive of the special reserve, it will be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments that are to be made in those years in respect of accidents that have happened previously". In section 107, the Legislature goes on to authorize the Board to form and maintain reserves:

> "**107.** In order to maintain the accident fund as provided by section 84, the Board may from time to time and as often as may be deemed necessary include in any sum to be assessed upon the employers and may collect from them such sums as may be deemed necessary for that purpose and the sums so collected shall form a reserve fund and shall be invested in securities issued by the Province of Ontario or in securities the payment of which is guaranteed by it or in securities issued by the Dominion of Canada or in securities the payment of which is guaranteed by it."

Pursuant to these statutory provisions, the Board in the fiscal year ending 31 December, 1965 had, as shown by its annual report for that year, the following reserve funds:

(a) In respect of the Schedule 1 accident fund $238,068,447.00;

(b) In respect of Schedule 2 operations $4,535,575.00.

From these investments the Board received a total income in 1965 amounting to $11,655,102.00 in respect of Schedule 1 accounts and this income from investments is discussed in the Board's annual report as follows:

> "Investment income for the year reached $11,655,102 in Schedule 1 accounts. Interest earnings related to funded liabilities amounted to $9,302,907 and the balance of $2,352,195 was earned through investment of funds not immediately required for current obligations. Results of the investment programme, therefore, represent a significant factor in the reduction of assessments necessary for 1965 operating expenditures."

The Investment Dealers' Association of Canada proposed that the statute be amended so as to permit investments authorized for trustees under The Trustee Act of Ontario. The investment dealers pointed out that the annual yield experienced by the Board acting under the statute presently confining the Board's investments to securities issued or guaranteed by Canada or the province of Ontario amounted to 4.637% calculated on an annual basis with reference to the year 1965. The investment dealers have analysed the present position of the Board's investment fund first from the point of view of comparable revenues for life insurance organizations, and secondly by a comparison made between the investment powers granted by statute to the Ontario Workmen's Compensation Board and those in the other provinces.

Life insurance companies regulated by the Canadian and British Insurance Companies Act of Canada are authorized to invest in government bonds and real estate mortgages as well as in shares of companies meeting certain standards of income over a prescribed time. These companies, controlling as they did in 1965 very large investment funds, enjoyed an average net rate of investment income varying between 4.99 and 6.28 per cent. The majority of these companies averaged over 5.6%.

Comparison was drawn between the operations of the Board under the present statutory provisions and its own experience in the operation of its employee pension plan. Under the pension plan it was possible by reason of the Ontario Pension Benefits Act for the Board to purchase securities not authorized by the Workmen's Compensation Act. As a result there was experienced a yield of 4.95 per cent.

To illustrate its submission the Association pointed out that if the statute under which the Board operates were broadened to permit investment under The Trustee Act of Ontario and one quarter of its funds were then invested in municipal bonds an increased net return of .5 per cent could be anticipated. The percentage mentioned would have brought in, had the fund been so invested, an additional $375,000.00 in the year 1965.

An examination of the investments authorized for workmen's compensation boards in other provinces reveals that, next to Ontario, British Columbia has the most restricted authority. In that province the Board is authorized to invest in specified municipal bonds where guaranteed by the province. At the other end of the scale is found the province of Manitoba which permits investment in preferred and common shares of Canadian corporations providing they attain

certain specified dividend requirements. These provisions are largely modelled upon the investment provisions of the Canadian and British Insurance Companies Act.

Under The Trustee Act of Ontario a trustee may invest in bonds and debentures of the Government of Canada, any province thereof, the Government of the United Kingdom, or any municipal corporation in Canada, or any bond guaranteed by any of the aforementioned governments as well as certain school board bonds and debentures, first mortages on real estate in Canada, debentures and investment certificates of loan and trust corporations, and certain securities of the international bank.

In the province of Alberta, the Board is empowered to invest in securities authorized by the Alberta Trustee Act where the powers are very similar to those set out in The Trustee Act of Ontario as summarized above. In the province of Quebec, the Board may invest its reserve funds in trustee investments which as described in the Civil Code of Quebec are much the same as trustee investments under the Ontario statute.

The investment powers granted by the above-mentioned statutes of Canada with respect to Canadian and British insurance companies are, no doubt, broader than those authorized for trustees for many reasons, including the obligation of the insurance companies to have their investment portfolios reviewed annually by the Department of Insurance of Canada. The annual audit in Ontario by the provincial auditor may afford some protection against improvident and irregular investments by the Workmen's Compensation Board. Persons coming under the restrictions of the Trustee Act are in most instances required to have their accounts passed in the court after scrutiny by the interested public and private agencies and beneficiaries.

Representatives of the Board in discussing the proposal by the Investment Dealers' Association of Canada to broaden the Board's power of investment pointed out that the Board experienced a higher yield under its pension plan investments mainly by reason of a high proportion of relatively recent investments which attract higher yield than some of the older investments carried in the Board reserve fund. At the same time, however, it was acknowledged that new investments authorized under The Ontario Pension Benefits Act would attract a higher yield than could be obtained in the accident reserve fund under section 107.

As discussed elsewhere in this report, proposals were made to me that pensions payable by the Board should be geared to the cost of living in the province. If this were enacted, and it is not my recommendation that it should be, it would seem prudent to authorize the Board to invest funds ear-marked to meet future pension payments, in securities which would reflect in their value and earnings the inflationary and deflationary fluctuations in the money market. This would require the expansion of the powers of investment under section 107 of the Act to include the power to invest in common shares and other equity securities at least to the extent authorized for insurance companies under The Canadian and British Insurance Companies Act of Canada. This would perhaps require surveillance by a qualified agency such as the Department of Insurance of the

province of Ontario for the protection not only of workmen beneficiaries under the statute, but for the contributing employers and the Board investment staff as well.

Alternatively, if pension payments either in respect of pensions hereafter granted, or heretofore and hereafter granted, are not to be affected by fluctuations in the cost of living, consideration will still have to be given to the expansion of the powers of investment if the contributing employers are to be given the benefit of maximum earnings, consistent with a minimum of real risk, on the very substantial funds now invested by the Board.

No submissions were received from anyone in opposition to the proposals of the Investment Dealers' Association of Canada and a supporting proposal was made by the Canadian Manufacturers' Association to the effect that the powers of investment should be broadened to include all securities authorized for trust fund investments.

Recommendation

Having considered the variation in the investment powers in the other provinces and having compared the types of investments authorized under the statutes of Canada for life insurance companies and for trustees under the statutes of Ontario, I recommend that section 107 of the Act be broadened to authorize the investment of Board reserve funds in investments authorized for trust funds under The Trustee Act of Ontario.

BRANCH OFFICES

At the present time, the Board's principal facilities are located on Harbour Street in the City of Toronto. At that location, the Board maintains its principal administrative office and all claims including the initial processing and the first review are dealt with there. Only at the appeal tribunal stage can a workman have his case heard outside the City of Toronto. Further appeals from that body in turn are heard in Toronto by the Board.

However, in the course of administration, the Board has set up offices for certain purposes in the following localities: Port Arthur, North Bay, Windsor, Ottawa and Kitchener. In addition a rehabilitation officer is stationed at Sudbury.

Audit Offices

The audit staff of the Board is required to visit periodically employers in the province for the purpose of auditing payroll records in order to ascertain that the full assessment is being paid into the accident fund by the employer according to the statute and the Board's regulations. In order to decentralize the operations of the travelling audit staff, the Board has for many years established audit offices outside of Toronto in Fort William, Ottawa, Windsor and North Bay.

District Claims Investigation and Rehabilitation Offices

Commencing some years ago, the Board, for the same reasons that led to the establishing of regional audit staffs, decided in the interests of efficiency to

have claims investigators in offices located in Fort William and in Ottawa. Shortly after the first of the district offices for the investigation of local claims was established a further decision was made to add a rehabilitation officer as well to the local staff. In the Ottawa district there are two such officers. All other districts have one.

Board representatives stated that with most claims sufficient information could be secured by correspondence to make on-the-ground investigation unnecessary and that such investigation was called for only in about one per cent of the cases. When investigation is felt to be necessary it is conducted by an investigator from the head office in Toronto or by an investigator at a regional office. When the regional office is used the investigator is advised by the Toronto staff regarding the claim, he makes his investigation, and then reports back to the Toronto Office. The investigator has no decision-making functions, all these remaining with the head office.

Officers of the Board maintained that, with modern rapid means of communication available, no delay results from having the decision-making function rest with the head office. All offices are connected to the head office by Telex and telephone. As many employers also use Telex facilities they are enabled to establish direct communication by that method with both the district and head offices. Board officials also emphasized the advantages of having decisions regarding claims centralized at one place, the chief of these being the degree of uniformity in decision making which can be achieved when so handled. There is always available too, at the head office, expert medical advice and experience by head office personnel in handling a wide variety of claims with facilities for their rapid adjudication.

Representations were made by the Town of Timmins asking that a regional office be established in that town. The information furnished by the Board relating to this request was that the North Bay office, which is within reasonable proximity to Timmins, is now able by visits of its staff in North Bay and by telephone calls, to service enquiries and claims emanating from the Timmins area. The rehabilitation officer in North Bay, who visits the town every second week, has established a working relationship with the welfare office there and, by telephone, the welfare officer keeps the rehabilitation officer informed between visits. The Board's review of the number of claims arising from the Timmins area, it was said, did not justify the establishing of a new regional centre at that location.

I feel that my powers on this Commission are limited to a general review of the Board's policy with relation to regional offices and the adequacy of the service rather than to make decisions as to where such offices are to be located. Information furnished by the Board is to the effect that the establishment of district offices is constantly under review and that this service has been developed as rapidly as the volume of work in any area necessitated it. In view of the lack of criticism before the Commission regarding regional offices I must assume that the Board's method of adjudicating claims is satisfactory. I understood the complaint

from Timmins to refer not so much to delay in adjudication of claims as to the lack of what was considered adequate attention at the investigation and rehabilitation level. The decision must be left to the Board. If it establishes offices in areas where the volume of work fails to justify them it will properly be subject to criticism before a Commission such as this. It could also be criticized for failure to provide adequate facilities in areas which require them. I have had no evidence before me to indicate a failure of the Board in either respect. I have no recommendation to make regarding regional offices.

I have not included under Branch Offices any reference to miners' chest examining stations. These are discussed elsewhere in this report.

ANNUAL REPORT

Under section 79 of the statute the Board is directed to prepare and submit to the Provincial Secretary an annual report. This report is tabled by him at the next session of the legislature after it has been submitted to the Lieutenant Governor in Council. The report is based upon the accounts of the Board audited by the Provincial Auditor or by an auditor appointed by Order in Council as required by section 78. It is also provided by statute that the Superintendent of Insurance shall, whenever requested by the Lieutenant Governor in Council to do so, examine into the affairs and business of the Board for the purpose of determining the sufficiency of the accident fund. Apart from the above the Board operates in its own way without interference or supervision from without.

Complaint was made by the Canadian Manufacturers' Association that the Board's annual report gives insufficient information on the reserves and investments of the Board. The treasurer of the Board, when dealing with this observation, stated that until this year the Board followed the practice of reporting only net balances in its various accounts in its annual report. This practice was discontinued in 1965 and the Board's annual report now shows contingency reserves and details in many accounts heretofore reported only on a net basis. The Board's method of reporting, now, it was indicated, meets the criticism of the association.

In the years following 1943 the Board was prevented from making a complete annual report by a statutory provision that the report be filed by the 15th of January in each year. As the Board's fiscal year ended on December 31st, it proved to be impossible to include the statistical information on operations in its annual report. The provision in the Act now requires filing "at the close of the year". As a result of the change the Board's reporting has expanded substantially. An inspection of recent reports discloses among its contents:

(a) a general review of the Board's operations for the year, including statutory changes occurring in the year;

(b) a balance sheet much in the style of a company annual report, duly certified by the independent chartered accountants appointed by the Lieutenant Governor in Council as the Board auditors;

(c) a statement of income and expenditures showing the revenue from the various Board funds and reserves and the expenditures similarly broken down into divisions;

(d) a summary of Schedule 2 transactions;

(e) a summary of the Board employees' pension fund transactions;

(f) a statement of fixed assets and accumulated depreciation;

(g) a statement setting out the status of each of the 107 classifications administered by the Board under Schedule 1;

(h) Board administrative expenses, including rehabilitation centre expenses;

(i) safety association grants.

The annual report for 1965 was received subsequent to the first hearing of this Commission and to the preparation of the brief of the Canadian Manufacturers' Association and no complaint has been received of the Board's annual report in its 1965 form. From this I conclude that the changes meet with the approval of those who sought more information. I accordingly do no more than repeat here the invitation from the Treasurer of the Board to those with suggestions for further improvement that they forward them to the Board where they will be welcomed.

In another brief the Ontario Mining Association proposed that the Board should report to the Attorney General rather than to the Provincial Secretary as it does now when its annual report is submitted. The Association felt that since the Board acted as a trustee and had certain judicial powers under the Act, it was logical that it should report to the legal branch of the government, namely to the Attorney General of Ontario.

The provisions as to reporting and tabling appear in the following section of the Act:

"**79.**—(1) The Board shall after the close of each year file with the Provincial Secretary an annual report upon the affairs of the Board.

(2) The Provincial Secretary shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session."

While the Board does exercise quasi-judicial functions ancillary to its administrative ones there is no authority given to the province and through it to the Attorney General to supervise these in any way. The appointment recommended elsewhere in this report by the Attorney General of a workman's adviser will in no way alter this.

A department with perhaps as great an interest as that of the Attorney General might be that of the Provincial Treasurer for, as compensation costs increase, revenue from corporation taxes must suffer proportionately. A third department with an undoubted interest in workmen and all that concerns them is the Department of Labour. The one department that would appear to have no apparent interest in the proceedings of the Board is that of the Provincial

Secretary. The explanation of the direction in section 79 that reports be filed with him undoubtedly lies in the historical background of the section, since, at the time of its original enactment in 1915, there was in the cabinet of the province no Minister of Labour.

In practice today it is the Minister of Labour who must supervise the proceedings of the Board, insofar as there is any supervision, the Board being an independent body, and it is that minister who deals with workmen's compensation matters, including changes in legislation by the assembly. There is no need to stress the close relationship that must exist between the Department and the Board not only because of its general interest in the workman's welfare but, as well, because of the joint association in safety measures described elsewhere in this report. I am satisfied that a change should be made in this section but that the change should be by substituting the Minister of Labour for the Provincial Secretary rather than in the manner requested in the above submission. *I recommend that subsection 79 (1) be amended by deleting the words "Provincial Secretary" in the second line and substituting therefor the words "Minister of Labour."*

CLASSIFICATION AND ASSESSMENT

CLASSIFICATION OF EMPLOYERS

The Board in administering the statute is required for industries listed in Schedule 1 to maintain an accident fund out of which compensation payments are payable in respect of accidents happening in any of these industries.

The fund is established and maintained through assessment by the Board of the Schedule 1 employers and on occasion, where it is necessary by reason of lack of reserves or to protect reserves, the Board may make a special assessment upon employers.

In order to assess the contributing employers either for the regular or special assessments, the Board may establish classes of industries and under this authority has established 107 classifications of industry coming within Schedule 1. A separate account is established and maintained by the Board for each class and subclass. The amounts assessed are so calculated as to cause the employers in each class or subclass to contribute sufficient amounts to meet compensation payments with respect to injuries to workmen employed by them and to maintain adequate reserves for this purpose.

So that the Board may be enabled to calculate the rate applicable to each class, the statute requires each employer to file with the Board a statement of the amount of wages earned by his employees during the previous year and the amount that the employer estimates he will expend for wages during the current year.

When the Board has received this payroll information from all employers in each class, it proceeds to assess and levy upon them the percentage of payroll which the Board deems sufficient to enable it to pay the compensation for injuries during the current year, to provide for administrative expenses and to maintain the reserve fund for the payment of compensation payable in future years in respect of claims in that class "for accidents happening in that year . . ." The fund thus established is to be such, the statute provides, that employers in future years will not be unduly or unfairly burdened with payments that are to be made in those years in respect of accidents that have previously happened.

In addition to the reserves required to be established to meet future payments for current injuries, the Board is authorized to establish a special reserve to meet "the loss arising from any industrial or other circumstance that in the opinion of that Board would unfairly burden the employers in any class"—section 102 (2). Thus, the assessment to be established by the Board and collected from employers in each of the various classes within Schedule 1 must produce revenues sufficient to enable the Board to pay compensation in the current year, Board operating expenses, fund future liability for accidents accruing in the current year, and maintain reserves including the special reserve.

In practice, the Board sends out notices of assessment commencing at the end of March in each year and the assessment is payable within two months after the date of issue. I have been advised that the last assessment is sent out by the 1st. of August. This program whereby assessments are spread over a five-month period enables the Board, according to its treasurer, to minimize its administrative expenses in connection with the collection of employer contributions. The Board loses interest on the assessments which are not paid on the 31st. day of March and which are assessed and paid over the succeeding five months. It also exposes itself to collection difficulties and bad debt write-offs by deferring collection over the succeeding months.

In the course of the hearings a suggestion was made to an officer of the Board that the statute might be more effectively administered if it authorized the assessment to be made at the beginning of the year and, if the Board so required, that the assessment be paid very early in the year. Alternatively, a proposal was made by a demolition firm that the assessment should be payable in equal monthly instalments so that the employer would be able to make a payment at his assessed rate monthly calculated on the payroll for that month. The purpose of this proposal was to reduce the hardship on the employer of paying a very large lump sum payment once per annum and secondly, to facilitate the computation of the assessment and payment by the employer. A third advantage would be that the employer would be more easily able to demonstrate his good standing under section 113 of the Act which I discuss elsewhere.

The Board has explained to me, however, that the cost of monthly collections would be very considerable and would require substantially enlarged accounting and computer facilities. The losses on assessment during the year 1965 were said by the Board to be relatively low, the precise figures being that the assessment charges for the year amounted to $92,253,000 whereas the bad debts written off in 1965 amounted to only $654,000 or less than one per cent of the total charges for the year.

I turn now to a suggestion raised by some employers that additional classifications or subclassifications should be established in order more fairly to relate assessments to payments for injuries to the employees in the group or subgroup of employers in question. Specifically, it was pointed out by these employees that the wrecking and demolition companies are assessed at the rate of 15 per cent of total wages whereas the compensation payments to employees of the complaining firms amount to something less than one-third of the actual assessment. One firm stated in its submissions to this Commission that its 1966 assessment amounted to $5,400.00 whereas the accident payments for the year would probably amount to $250.00. Apparently the assessment for this classification was at one time as low as 4¼ per cent but over a period of eight years has climbed to 15 per cent.

Examining the Board's table of rates, it would appear that the "business of supplying labour for wrecking of buildings, wrecking of buildings by a general contractor, or as a business" is found in Class 24, rating number 859. The annual report by the Board for the year 1965 reveals that this rate group paid in assess-

ments during 1965, $329,000, and benefits were paid out in the amount of $178,000. In prior years, the net accumulated deficit was $125,000 and by the end of 1965 this deficit was reduced to $5,700 but, after estimated outstanding claim costs and outstanding assessments were taken into account, the deficit would be $65,000. The Board further estimated that the required contingency reserve for this rate group is $35,000. These figures are in round numbers.

Another employer stated that demolition businesses should not be rated as one group but should take into account the locality where a business is being carried on, the heights of the buildings under demolition, and the safety records of the employer. It was submitted that the inefficient and accident-prone organizations in the grouping drive the assessment rate sharply upward for all other employers in the group. In support of this submission, the employer filed a table showing that from 1959 to 1966 (during which period the rate increased from 4¼ per cent to 15 per cent) the employer's assessments were approximately four times the compensation paid out by the Board to the employer's employees.

A more general submission was made by the Ontario Federation of Construction Associations that a general review of work classifications and work structure should be undertaken. Elsewhere I have dealt with the right of the employer to appeal against assessments. Therefore it is only necessary for me to observe at this point that the aggrieved employer can carry his appeal through the appeal structure to the Board members themselves. One of the demolition employers, to whose submissions I have referred above, had made such an appeal to the Board in 1963. His rate was 10 per cent. This appeal was disallowed because, as shown in the figures above, the rate group 859 was in a deficit position.

Typical of the somewhat independent view taken of the continuous and serious problem of assessment rates, is that of the spokesman for the Canadian Manufacturers' Association who stated that many of its members complained from time to time about individual rates and many discussions have been held between the Association and the Board on this matter. The Association spokesman stated, however, that he had no suggestion to make as to any change in legislation which would improve the situation. The Canadian Manufacturers' Association had no "over-all criticism of the way in which the Board is classifying . . ." The Association representative became more fully informed regarding rights of appeal during the hearings before me and in the end made no proposal to change the present statutory provisions.

The Board treasurer, in his evidence, stated that the Board did not advise the employer when sending out the notice of assessment that he had a right of appeal. This had not been considered necessary because of the fact that in many of their public statements and in their discussions with employers the employer was informed of the right of appeal. Furthermore, once a letter of complaint is received from an employer the Board treats this as an appeal. I have elsewhere in this report recommended that the appeal procedure should be formalized in the Board regulations and that these regulations should include the clear statement that the appeal procedure is available to employers on issues relating to assessment and ratings.

When considering the question of the rates applicable to the various groups and subgroups, it is necessary to bear in mind that one must strike a balance between assessments, having regard to the risk of the specific industry on the one hand, and the principle of sharing risks by the employers as a whole. On the other hand, it would appear, to take an example, that the rate payable by the demolition contractors could be sharply reduced if this rate group were included in the general classification number 24 which embraces general contractors and various groups of subcontractors. To do this, of course, would immediately invite criticism from members of group #24 who would feel that they were paying an assessment unrelated to the appropriate risk rating for their industries. It was because of this latter consideration that the subclassification came to be made originally.

In connection with the specific proposal by the demolition contractors and the general proposal by the construction associations to which I have referred, it should be emphasized that the Board reviews all assessment rates yearly by reason of the need to balance the rate for the new year with the surplus or deficit contingency reserve in each rate group. From these annual decisions by the Board on the rates for each of the 107 rate groups, an appeal lies through the appeal structure described earlier in this report and the evidence adduced does not persuade me that this rate-setting procedure and the attendant appeal rights have not proved adequate in recent years. Any demand for reclassification could be taken through the same channels.

From the discussions which have gone on before me relating to the briefs dealing with questions of assessment and ratings, I have come to the conclusion that the present statutory provision relating to assessment is adequate and that the procedures followed by the Board in assessing and collecting assessments and in establishing rate groupings and assessment rates do not call for any change.

Apart entirely, however, from any conclusions I may have reached on the evidence before me, I am satisfied that decisions as to classification come wholly within the administrative functions allotted to the Board by the Act under which it operates. Classification and reclassification are under constant review and the right of the employers in a class to appeal Board decisions is clearly stated. Beyond that point I do not feel, under my terms of reference, that I can go. I make no recommendations.

As no submissions were made for Board decisions on classification to be made appealable to the Courts I have not discussed this. I am informed, however, as this report comes to be printed that another body will propose a change of the kind, which information calls perhaps for some comment on my part. In other parts of the report I have dealt with and emphasized the desirability of leaving all matters with which it must deal in the hands of the Board. The acknowledged success of the system under which compensation matters are administered in Ontario stems largely from the freedom from litigation which the system affords. While matters of classification might be viewed in a somewhat different light from disputes as to compensation it would still be difficult to justify to a claimant a right of appeal to the Court for an employer when all rights of appeal were denied to him, the claimant.

I would, for the reasons stated, consider it inadvisable for such an exception to be made to the concept of the Act which seeks to remove compensation matters from contest in the Courts.

MERIT RATING AND SECTION 86(6a)

The statute authorizes the Board to adopt "a system of merit rating . . . if deemed proper . . ." (Section 99 (3)). By a further provision the Board may place an individual employer on a merit basis. Section 86, subsection (6) reads:

> "Where, in the opinion of the Board, the ways, works, machinery and appliances in any industry conform to modern standards in such manner as to reduce the hazard of accidents to a minimum and the Board is convinced that all proper precautions are being taken by the employer for the prevention of accidents, and where the accident record of the employer has in fact been consistently good, the Board may reduce the amount of any contribution to the accident fund for which such employer is liable."

Conversely, the statute provides that where the work injury frequency and accident cost "of the employer are consistently higher than that of the average in the industry in which he is engaged, the Board, as provided by the regulations, may increase the assessment for that employer by such a percentage thereof as the Board may deem just. . . . (Section 86 (6a)).

Certain other provinces have similar legislation. The Workmen's Compensation Act of Alberta provides for the adoption of "a system of merit and demerit rating . . . in the discretion of the Board." Under a British Columbia statute the Board has similar authority with reference to what is there termed "experience rating".

Various proposals were made to me regarding merit rating and penalty rating generally. In this discussion I refer to such plans as "merit rating plans." In other jurisdictions this method of creating an incentive for implementing safety measures is at times called "experience rating" or a "demerit system." As will appear later the Board applies the merit rating system to some but not to all classifications.

A proposal was made by Northern Forest Products, a Division of Northern Wood Preservers Limited, that in a merit rating system the employer should be entitled to have the cost of permanent disability allowances and pensions payable on deaths, excluded from the computation of the employer's rate under the merit rating system. In the alternative the company proposed that where there is doubt regarding the responsibility of the employer for a permanent disability (as for example in back injury cases where the condition has been recurring prior to the final incident), the cost of pensions should not be taken into account in the merit rating computation. Neither of these submissions was elaborated. The company in its written submission to the Commission favoured the practice of the Board in utilizing merit rating plans.

The Labourers' International Union was critical of the present Board practice in not applying the merit system to all employers. As a result it was said a good accident record in one year gave no assurance to an employer that his

contribution to the accident fund would be reduced in the following year. The union proposed that an incentive payment plan should be adopted whereby an employer's contribution would be automatically reduced if a favourable accident record had been established by that employer in the preceding year.

The essence of this union's position as revealed in its detailed submissions is that a company, which by expending a considerable amount of money and effort in safety programs, devices and other measures, achieves such a low accident record that the Board pays out substantially less than the company's contributions to the accident fund, should be encouraged to continue its efforts by a reduction in its subsequent assessments. The union made reference to the Alberta plan under which the Board will refund as much as 25 per cent of the annual payment to the Fund where the accident record so warrants.

In the Alberta practice, according to a witness on behalf of the union, the company is given a credit not only for the money which it has saved the Board, but also for its contribution to safety programs. Conversely, it was stated that the Alberta board charges against the company's entitlement to rebate any adverse reports by the Board's staff on the employer's safety measures. The union representatives recognize that the legislation in Ontario and Alberta is in substantially the same terminology, but they suggest that Alberta has adopted the positive incentive approach and rebates have reached as high as 25 per cent whereas in Ontario their information is that the rebate is in some cases no higher than six per cent. They do not feel that this variation from the universal insurance principle upon which the statute is predicated is adequate to provide the necessary incentive or inducement to employers to establish proper safety programs and conditions.

In discussing the question of merit rating plans the Automotive Transport Association of Ontario proposed that the authority given the Board by section 86 (7) to relieve the employer from the additional obligations which might be imposed under section 86 (4), to which I shall refer later should be extended to allow the Board to relieve against an increased assessment which may be applied under section 86 (6a).

It was the opinion of this association that the powers granted to the Board under section 86, subsections (4) and (6a) to increase the assessments or contribution of an employer to the accident fund place the Board in an invidious position in that the Board is the administrator of the fund and also the final judge of the contribution to be made thereto by an employer. Consequently, the association believed that the statute should provide for an appeal from a Board decision to increase an employer's assessment under section 86, to an independent body. No observations were made by the association as to the nature or identity of such a body or tribunal.

The Canadian Manufacturers' Association, while considering that any system of merit rating constituted a departure from the principle of complete collective liability, saw in the plan a useful means of providing an inducement to employers to prevent accidents. In its view, the plan having been tried on an experimental basis for many years, the Board should now be encouraged to promote its extension to more groups in order to reward employers with low accident

experience and to encourage others to achieve the same. In so doing, the Canadian Manufacturers' Association suggests that certain costs should not be charged to the employer in the computation of his merit rate, such as pensions for pneumoconiosis.

Perhaps because of the complex nature of merit rating, and perhaps because the Board has not seen fit in the past to promulgate regulations in respect to it, there appears to be considerable misunderstanding among members of some trade unions as to the present merit rating practices of the Board. Before discussing the Board's plan under section 99 (3) as it now stands, I should point out that merit rating, or experience rating, consists of two different plans operating at the same time and for the same long range purpose. First, there is the incentive plan where the employer is induced to promote safety practices in return for receiving a reward in the form of reduced assessment or contribution to the accident fund. Secondly, there is the penalty or demerit system where the employer is penalized for a bad safety record by paying a double or otherwise increased assessment or contribution to the accident fund. There is, of course, in addition, the position of the Schedule 2 employer who is always on an incentive and demerit scheme by the very nature of his position as an employer under Schedule 2 whereby he becomes responsible for his individual costs.

The Treasurer of the Board in his evidence stated that, prior to the Commission hearings in 1950, various systems of experience rating had been tried by the Board, all of which had been discarded as having been found unfair to certain employers as well as being actuarially unsound. After the 1950 hearings renewed discussions were had with trade associations and interested employer groups in an effort to work out a satisfactory system.

In 1952 a new experience rating plan was developed by the Board in conjunction with the Compensation Committee of the Canadian Manufacturers' Association. By it a 25 per cent departure from full collective liability was made effective in seven rate number classifications out of the 107 rate classifications under Schedule I of the Act. This pilot plan affected 238 firms which, on being polled by the Canadian Manufacturers' Association and the Board, voted to adopt the plan. After a three year trial period these firms voted to continue with the plan.

At the time when the pilot plan was renewed, standards were adopted by the Board for the extension of the plan. To be eligible for the experience rating procedure a firm is required to have an assessable payroll of at least $40,000 and to have been assessed at least $500.00 in each of the three years immediately preceding the taking of the vote to determine whether the firms in the rate classification group in question are desirous of joining the plan. On a poll to ascertain the desires of the employers, at least 51 per cent of the eligible firms must reply in the poll, and of those replying, at least two-thirds must vote in favour of experience rating. When these standards are met, merit rating becomes effective in the given rate classification group and is applicable to all firms therein (but not to individual firms which are by the above standards ineligible) regardless of whether or not the firm in question has voted in favour or even cast a ballot in the poll.

Under the merit rating plan the Board compares the three year average cost rate of each eligible firm individually with the three year average cost rate of all eligible firms combined. If a particular firm's average cost rate is lower than the group average, a merit credit will result, and conversely, a demerit charge is made where the individual firm's average cost rate is higher than the group average. The merit credit or demerit charge is limited to 25 per cent of the difference of the firm cost rate and the group cost rate.

After eight years of testing with the 25 per cent permitted differential, a similar plan was adopted in 1960 involving a 50 per cent departure from the full collective liability principle. This was done to meet complaints that demerit charges under the 25 per cent plan were not serious enough financially to prod the employers into a greater effort towards safety programmes, safety equipment, and the other measures which the safety associations promote.

It is important to realize when considering the operations of these merit rating plans that the merit credits paid to firms with a low cost experience equal the demerit charges made to other firms within the same classification which have a high cost experience. This is not a perfect balance mathematically, but the Board informs me that rate balances are not affected by more than one-quarter of 1 per cent in any one year of the merit plan's operations.

Out of the total 107 rate classifications under Schedule 1 there are at present 28 rates which are subject to the 25 per cent merit plan and three which are subject to the 50 per cent merit plan. The size of the operations of these two plans can be appreciated from the fact that the classifications cover firms with a total payroll in 1965 of $2,933,000,000.00, and charges and refunds were made in 1965 each in the amount of $1,268,000.00. The following is an example prepared by the Board and presented to illustrate the operations of its two plans as relating to an individual firm:

Year	*Payroll*	*Accident Cost*	*Cost Rate*
1963	$254,914	$2,036	.799
1964	282,541	796	.282
1965	325,653	714	.219

Three year average firm cost rate = .43

25% *Plan:*

Merit credit: 25% of (.86 — .43) = .1075

Experience rating adjustment:

$$\frac{.1075 \times 325{,}653}{100} = \$350.08 \quad \underline{Credit}$$

50% *Plan:*

Merit credit: 50% of (.86 — .43) = .2150

Experience rating adjustment:

$$\frac{.2150 \times 325{,}653}{100} = \$700.15 \quad \underline{Credit}$$

In the above examples, .86 represents the three year average *group* cost rate. The following is an example prepared by the Board to illustrate the converse situation where a demerit charge is made:

Year	*Payroll*	*Accident Cost*	*Cost Rate*
1963	$13,185,112	$161,356	1.224
1964	14,048,863	171,062	1.218
1965	15,277,794	202,895	1,328

Three year average firm rate = 1.26

25% *Plan:*

Demerit charge: 25% of (1.26 — .86) = .10

Experience rating adjustment:

$$\frac{.10 \times 15,277,794}{100} = \$15,277.80 \quad \textit{Charge}$$

50% *Plan:*

Demerit charge: 50% of (1.26 — .86) = .20

Experience rating adjustment:

$$\frac{.20 \times 15,277,794}{100} = \$30,555.59 \quad \textit{Charge}$$

Since the Labourers' International Union dealt extensively with comparisons between the Alberta merit rating plan and the Ontario merit rating plan, the Board was also asked to make such a comparison. In the first illustration cited above, the credit under the Ontario 50 per cent plan of $700.15 compares with a merit rebate or credit under the Alberta plan of $814.13. In the second, the charge under the demerit plan of $30,555.59 against the employer is to be compared with a charge under the Alberta plan, based, again on the same facts, of $31,930.59. Other comparisons indicate that there is not very much difference under the two plans, but from an actuarial viewpoint I am advised by the Treasurer of the Ontario board that the Alberta plan does not necessarily bring about a cancellation or offset of merits and demerits so that a particular rate classification balance might be affected by the operation of the merit plan in that province over a period of years.

In considering the value of merit rating under the Workmen's Compensation programme, it becomes apparent that there are several considerations which favour such a programme and several which militate against its usefulness. A merit programme rewards good accident prevention performance by reducing the monetary contribution of the successful and efficient firm to the accident fund. Conversely, a poor accident prevention performance brings an immediate financial penalty in the form of an extra assessment. On the other side of the ledger it must be borne in mind that merit rating is contrary to the principle of collective liability, the premise upon which the major portion of the Act is based. Furthermore, merit rating may have an adverse effect on accident reporting. In marginal cases where the employer can leave the employee on the payroll on some light duty, or perhaps on occasion without any duties at all for a short period of time, it may be of advantage financially to the employer to do so rather than to report the accident and have the cost thereof charged against his average. This course of conduct which could affect the workman medically also makes it difficult, in the event of re-injury or a change of medical condition in future years, to go back and obtain details of the injury at the time of the initial

accident. It may also be said that a merit plan rewards the very large efficient company, which can afford safety personnel and additional supervision, at the expense of the small operator. The small operator is also more susceptible to variations in his merit and demerit charges because an accident is financially more significant in his calculations than is the same accident to the calculations of a large operator. Finally, the merit plan is based entirely on the cost of an accident rather than the incidence of accidents. The cost of an accident is beyond the employer's control whereas the number of accidents may by effort on his part be substantially reduced.

Commenting on these matters Mr. Justice Middleton in 1932 stated

> "Great care would have to be taken in the application of any such merit system because the whole principle of collective liability is based upon the doctrine of average. . . . The whole principle is that the fortunate must bear some portion of the burden of the unfortunate. This is illustrated in fire insurance. The rate is fixed having regard to experience, but no householder ever expects to receive fire insurance at a reduced premium simply because he has carried insurance for so many years and never had a fire."

With regard to the protests against pension assessments for permanent disability, such as back injuries or pneumoconiosis, being charged to the employer when computing the merit rate the position of the Board is that it is not practicable to do other than follow its present practice: that is, in the first instance, to charge all such awards to the firm in question. An appeal may always be made and is allowed in those cases where unusual circumstances exist, as where a death has occurred by reason of an act of God. Amounts contributed from the second accident fund where a pre-existing condition has been established are deducted and, if recovery against a third party (section 9) is made, the amount recovered is deducted. I am not prepared to recommend a change from the existing practice of the Board in this computation of the merit rate.

I have referred previously to a request for a provision in the Act similar to that of section 86 (7) which reads

> "The Board, if satisfied that the default was excusable, may in any case relieve the employer in whole or in part from liability under subsection 4."

Subsection (4) refers to the power given the Board to impose a penalty for unsafe working conditions. What is now sought is a similar provision to subsection (7), to relieve against provisions for demerit or against a liability which may be imposed under section 86 (6a). I do not believe an amendment to be necessary. Just as the Board has power to impose assessments it has power to review them and change them and, as pointed out above, it does in certain circumstances do so. The ordinary appeal procedure within the Board is open to an employer to the same extent that it is to a workman.

I shall leave discussion of the merit rating system for a consideration of subsection 86 (4) and a further consideration of 86 (6a) of the Act. The first of these allows the Board to impose a penalty where unsafe working conditions exist. The second, to which I have referred in connection with the merit rating system.

permits the Board, where the work injury frequency and accident costs of the employer are consistently higher than the average in the industry, to increase the assessment of that employer.

The first of these sections has not been used by the Board since the time when various Acts coming within the jurisdiction of the Department of Labour were tightened up to provide adequate penalties for unsafe labour practices. It is now the policy of the Board to restrict its activities in the accident prevention field to educational matters and to leave the policing and enforcement by penalties in safety measures to the Department of Labour and other departments of government. Elsewhere in this report I express my approval of this practice and need not discuss it here.

Section 86 (6a) can be utilized quite apart from the merit rating system against all employers who do not come within that system. It is of course designed to stimulate safety efforts on the part of employers. It was little used during the year of its enactment, 1964, but has been effectively used since that time. When an assessment is increased under this subsection it not only brings immediate pressure upon the employer to seek improvement but notification is given as well to the Director of Safety under the Board's jurisdiction. Mr. Draper who holds that position testified that this information has proved to be of the greatest assistance to the safety associations. It enables an association to take immediate steps to lend its assistance to that particular employer. As new computers come into use this assistance will improve further as computers will enable the Board to furnish information more quickly to an association when it becomes apparent that a particular employer has entered the area where a penalty may be imposed. The Board is also enabled, if it again becomes necessary to consider a company's record, to receive from the safety association a report on what progress the company has been able to make in its safety programme.

The conclusion I draw from all that has been said is that the financial prod which section 86 (6a) places in the hands of the Board, if freely used as at present, might in itself be sufficient to achieve the desired improvements in safety programmes that are sought. It lacks the incentive feature of the complete merit rating programme but has not the disadvantages which are inherent in that system. Under the merit system the small industry suffering a fatal accident would suffer severely. If a small industry is not under the merit system, account may be taken of the employer's safety efforts when the Board considers whether or not a penalty should be imposed. Up to the present time the Board has proceeded cautiously as recommended by Mr. Justice Middleton and, with one possible exception, has not imposed the merit rating plan on any class rate group that has not voted to have it apply. The advantages of the merit plan are not such as to justify a recommendation by me that it be imposed on all industry coming within Schedule 1. Any justification for doing so prior to the enactment of Section 86 (6a) in 1964 is now lessened substantially by the ability of the Board to use that section against non-participants in the merit plan to achieve the same result. The Board is in the best position to judge from experience in the future and by comparison, the effectiveness of the two measures and I would not interfere with that authority. I make no recommendation.

It has been apparent, however, throughout the hearings that a substantial misconception of what is involved in a merit plan exists among many. It would be of substantial assistance to those who might bring themselves under the plan as well as to those who already participate if regulations were enacted by the Board outlining specific requirements and the method by which the plan is operated. I would so recommend.

On appeal procedure, if appeals were to be allowed by employers to an outside independent body as has been requested, a similar concession should be granted compensation claimants dissatisfied with the adjudication of their claims. I have discussed this elsewhere and for the reasons there stated I would not recommend that any appeal to an outside body in this instance be allowed.

MEDICAL MATTERS

Background

Medical aid is dealt with in section 51 of the Act and subsections (6) and (7) thereof give the Board jurisdiction to determine all questions as to the necessity, character and sufficiency of any "medical aid" furnished or to be furnished, and as to payment for medical aid. "Medical aid" is defined in subsection (2) of section 51 to include the aid of other professions and practitioners as well as medical doctors and extends to dentists, drugless practitioners registered under The Drugless Practitioners Act, chiropodists, hospital and nursing services, etc.

Certain Board forms were filed at the hearing that had reference to the provision of medical aid and the choice of practitioner. These are:

(a) *Circular G "Claims Information for Workmen and Employers"*. This refers throughout to "doctors" and does not specify that the aid of other practitioners may be sought. At page 6 the following appears:

> "The Board gives the injured workman, coming under the Act, the initial choice of doctor, but he may not, without permission or approval of the Board, change doctors, leave Ontario or transfer to a distance for treatment".

(b) *Treatment Memorandum—Form 156* is the form supplied to the injured workman by his employer which is to be taken by the workman to the treatment agency. It is addressed to "Doctor/Hospital . . ." and bears the notation

> "The workman has the initial choice of doctor, but may not change doctors without permission of The Workmen's Compensation Board, Ontario".

These forms are stockpiled with employers.

(c) *Form H* is a form letter to the injured workman with which is enclosed the workman's report of accident form for completion. On the back of Form H appears general information about the benefits available and under the heading "Medical Aid" the following appears:

> "When a claim has been allowed by the Board the workman is entitled to receive whatever medical and dental aid is necessary. He is also entitled to whatever artificial limbs or appliances are necessary, and to have them kept in repair or replaced on the approval of the Board.
>
> The Board gives the injured workman, coming under the Act, the initial choice of doctor, but he may not, without permission or approval of the Board, change doctors, leave Ontario or transfer to a distance for treatment.

All medical aid is under the direction of the Board and paid for directly through the Board.

It is unlawful for an employer to collect from a workman any contribution towards medical aid. A doctor is not entitled to collect from a workman for services rendered under the Act".

(d) *Forms 8 and 26* are the Doctor's First Report and the Doctor's Progress Report forms.

(e) *Form 82* is a poster which employers are required to post in a conspicuous place as provided by the Act. This provides that in all cases of accident, the workman shall, inter alia, "have the initial choice of doctor; this is a privilege that is granted at the discretion of the Board; a change of doctor cannot be made without the Board's permission." The poster also defines "medical aid" in a footnote by summarizing subsection (2) of section 51 of the Act.

(f) *Form 41* is the Workman's Progress Report and *Form 26*, the Doctor's Progress Report, is usually sent with it together with the request that he take it, Form 26, to his doctor for completion.

(g) There is also *Form 43—Doctor's Special Report* which is usually sent to the workman with *Form 41A* (Workman's Progress Report) when the Board is considering a permanent disability award.

Submissions

Representations were made by The Ontario Medical Association, The Ontario Osteopathic Association, The Ontario Chiropractic Association, The Ontario Federation of Labour, the International Nickel Company and others regarding section 51 and the forms and memoranda referred to above. I shall deal with the submissions in order.

(1) Notices and Forms

As section 51 (1) and (2) includes osteopaths and chiropractors among those entitled to give medical aid, it is reasonable when referring to the services of a doctor in notices and forms that it be made clear that the term is not restricted under the Act to members of the medical profession. Since termination of the hearings I have been informed that circular "G" has been amended to do this. *In order to achieve similar clarification throughout I would recommend that Board forms and memoranda be reviewed and, where necessary, altered to make clear that when medical aid is referred to it extends to treatment by practitioners specified in section 51.*

(2) Right Afforded Workman to Choose Medical Practitioner

It has for some years been the practice of the Board to allow a workman to make the initial choice of practitioner within the limits prescribed by section 51 (1) and (2). The privilege does not extend to any subsequent choice if a change is made. In this, as in other matters, I believe the privilege now accorded should be clarified to constitute a right and that this can be done by regulation

of the Board. *I recommend that the Board provide by regulation that a workman is entitled to have initially a free choice of practitioner as specified in section 51 (1) and (2).*

(3) Demands for Transportation

Section 51 (12) of the Act should not be interpreted to permit unreasonable demands for transportation. The section in question requires an employer to furnish to an injured workman transportation to a hospital, a physician, or to his home. As stated above the Board permits a workman his own choice of a doctor or other practitioner. Submissions were made that on occasion, requests, considered to be unreasonable ones, have been made by workmen that they be transported to a physician twenty or thirty miles away when one close at hand was available. While these demands may not be of frequent occurrence I am in accord with the suggestion that a suitable amendment to the subsection should be made. *I recommend that subsection (12) be amended by having inserted after the word "physician" in the fourth line thereof the words "located within the area or within a reasonable distance of the place of injury."*

(4) Right to Change Practitioner

The Ontario Osteopathic Association and the Ontario Chiropractic Association recommend that when a workman is dissatisfied with his doctor or his treatment he should be allowed to change. Representatives of these associations felt that a workman with low back pain should not only be allowed, upon request, to change to someone other than a medical practitioner but should be encouraged by the Board to do so. It was stated that changes were made on occasion from an osteopath to a medical doctor but changes in the opposite direction did not seem to occur. A spokesman for the Ontario Medical Association supported the submissions made in part though on different grounds. It was the opinion of his association that treatment and, where necessary change of physician should remain as much as possible in the hands of the patient's own doctor. This recommendation the association extended to the selection of a specialist, where one was necessary, by the patient's own doctor.

The comment received from the Board on these submissions is that it does not look with disfavour upon a request for change and it is frequently granted. Its decision, however, is influenced by the fact that interference with treatment is more often than not undesirable and the necessity for control of the patient who, failing to get the answer or perhaps the result which he wants, from one physician, seeks to shop around until he does. The situation is not quite the same in compensation cases as it is where the patient is responsible for his own medical costs. It would seem that the control now exercised by the Board must be left in its hands. I believe, however, that the maximum co-operation from practitioners will be received if, when other medical treatment or opinion is sought, they be allowed to have some part in making the change or at least to know that their opinions have been considered. There must also be occasions when a request for treatment by someone other than a medical practitioner should be looked upon with favour. I limit myself, in this, to the above suggestions to the Board.

RELATIONS OF THE BOARD WITH THE HEALING PROFESSIONS

BOARD RULE REQUIRING OSTEOPATHS AND CHIROPRACTORS TO SECURE PERMISSION FOR ALL TREATMENT BEYOND 17 DAYS

Members of these professions resent finding themselves placed by the above regulation in a category different from that of doctors who are treating patients. They also resent having to submit cases in which they feel they are particularly qualified to a medical specialist for opinion as to treatment or disability. As a layman, in this matter, I find myself in difficulty. The workman who seeks treatment from the drugless practitioner believes him to be most able to help and the practitioner himself, if he undertakes the treatment, undoubtedly believes the same thing. The Board on the other hand feels, after the stated time, that it should have an opinion from its own medical advisers who in turn depend upon the opinions of their professional brethren.

The Act provides in section 51 (6) as follows:

> "All questions as to the necessity, character and sufficiency of any medical aid furnished or to be furnished and as to payment for medical aid shall be determined by the Board."

It seems to me that I must leave matters as they are. It is essentially an administrative function for the Board to decide these matters. While there are at present no chiropractors or osteopaths on its medical staff the composition of the Board itself is not confined to doctors. Two others sit on it. These members must be aware of the competence of drugless practitioners and must use their judgment regarding the extent to which such services are to be used just as they exercise it regarding the services of personnel in the medical field. As was said by Mr. Justice Roach the Board is not concerned with any jealousies that may exist among the professions. Its sole care is that of the injured workman. One must believe that it conscientiously carries out this trust. It is as a consequence of this that jurisdiction in these matters has been left wholly in its hands and there I believe it should remain.

TREATMENT BY CHIROPRACTORS AND OSTEOPATHS

Spokesmen for these professions urged that the Board make fuller use of the services which they have to offer. Testimony was given regarding the courses of training required and the particular fields in which these professions practice. In its brief the Ontario Chiropractic Association referred to the increase in back injury cases commented on elsewhere in this report. It was alleged that the medical profession has failed to cope adequately with the problem as its members either fail to use manipulative procedure or seek to use it having inadequate skill or knowledge of the technique. In support of this extracts from a number of reports by medical men were referred to. In particular reference was made to a statement by Dr. Ronald Barbour of England who conducted a five day course in "manipulation" at Sunnybrook Hospital in Toronto in 1966. He said:

> "17 per cent of my patients require manipulation and it is a tragic fact that the average physician learns of manipulation after his patient has been

helped by someone outside the medical profession. This naturally arouses resentment."

The submissions made were:

(1) by both professions that greater use be made of their services;

(2) by the Ontario Chiropractic Association that duly qualified chiropractors be added to the staff of Downsview Hospital and Rehabilitation Centre where many cases of back injury receive treatment;

(3) by the same Association that a chiropractor be retained as a consultant by the Board.

There can be no doubt that wider recognition is being accorded both osteopaths and chiropractors as time goes on. Mr. Justice Hall in his report on medicare spoke with approval of the favourable report on these professions made by Mr. Justice Lacroix in Quebec and there is now in progress in this Province an inquiry by a commission into the healing arts. The Board's practice and policy will no doubt be influenced by the finding of that commission when it appears. The Board is in a better position than I am to evaluate the services of these professions and I do not intend to direct at this time what it shall do. In view of the statements made from time to time by eminent members of the medical profession, however, one of which statements I have already quoted, it would seem reasonable that the Board, if not by appointing a chiropractor to its hospital staff or as a consultant, should give some recognition to the submission that it use the services of osteopaths and chiropractors to a greater degree. Spokesmen from these professions state that they refer patients to the medical profession but that it is what they describe as a "one way street" and the Board and its medical officers do not in turn take advantage of the particular services which osteopaths and chiropractors can furnish. I strongly advise that this be done but for reasons which I have already stated when considering the 17-day regulation I decline to make any definite recommendation to limit the Board's discretion in this matter.

AMENDMENT OF SECTION 51 TO INCLUDE CHRISTIAN SCIENCE PRACTITIONERS

The gist of the submission from the Christian Science Committee on Publication is (a) to request that Christian Science practitioners be paid and (b) to provide that a workman who goes to a Christian Science healer should not be required to submit to medical treatment in order to be entitled to compensation. The brief suggests that compensation is denied to those who refuse medical treatment and that the Act therefore infringes a basic human right to seek healing with the aid of a Christian Science practitioner instead of a medical doctor. There appears to be nothing in the Act which specifically denies compensation to a workman who refuses medical treatment but section 22 (1) requires a workman who claims compensation to submit himself for examination by a duly qualified medical practitioner if so required by his employer or for examination by a medical referee if so required by the Board. Section 23 (3) provides that if a workman does not submit himself for examination when required to do so as provided in section 22 (1), his right to compensation is suspended until the examination has taken place.

There is nothing in these provisions to prevent any workman exercising his right to have treatment from a Christian Science healer. The position of the Board, however, is simply that if the employer, through it, is to pay for the workman's time off following an accident, it is entitled to a better diagnosis than can be received from a lay practitioner. No difficulty might be experienced in some cases but the supervision of the Board is not restricted to these. Dislocations, subluxations involving joints, trouble with the liver, spleen, kidneys and numerous other complaints call for substantial accuracy in diagnosis. The requirement of the Board that only persons with what it consideres adequate training be allowed to diagnose compensable conditions is to be understood and I see no way in which an exception can be made from the general rule.

The same may be said of treatment. The Board, when it considers it necessary, must require injured workmen to be treated by those with some special medical training. It would be remiss if it did otherwise.

The fact that Christian Science practitioners are not recognized by registration under The Drugless Practitioners Act underlines the view that they are not considered as qualified to diagnose, assess or provide adequate treatment in compensation cases. With all deference to the sincere opinions of those who believe otherwise it would not be proper under these circumstances to place Christian Science healers on the same footing as the other practitioners mentioned in section 51.

The Board reports that few cases involving Christian Science workmen have come to its attention and in relatively few jurisdictions on this continent has the recognition now sought been given. There is sufficient ground for refusing to do so here and I make no recommendation for change.

ALLOWANCES FOR TRAVEL

A further question is raised by osteopaths and chiropractors as to fees and allowances. The representative of the osteopaths explained that osteopathic treatments involved more time than medical treatments and asked, as a result, that the amount allowed in payment for treatments be increased. The chiropractors asked for increased travel allowances pointing, out that members of their profession were sometimes located at some distance from each other and, as a consequence, more time had to be spent on travel than was the case with medical doctors.

I make no recommendation in this matter. In general, I would think, there should be little or no difference in the fees and allowances payable to the members of the various professions. In any event, it is wholly an administrative matter for the Board and these objections, if they have merit, will I feel certain, be given every consideration by that body.

BILLING OF MEDICAL FEES

Spokesmen for all the professions advocated a change from the present system whereby the physician is required to render his account directly to the Board rather than to the patient. The objection arises from the power of the Board to determine the fees. It is felt that the professional man should render

his bill to the patient and that the Board should then reimburse the patient. This is the same submission that has been made regarding medicare schemes. There are arguments for and against it but the situation now considered differs in this respect that the Board is in a position similar to that of an employer retaining a doctor to treat his employee. It is not unreasonable in these circumstances to demand that the bill be submitted to the person doing the retaining. The present practice is simple and fast and creates no hardship. I would recommend no change.

OPTOMETRISTS

For many years optometrists have provided their services to workmen entitled to compensation under the Act and such services are paid for in due course. The submission made is that authority for this procedure is lacking and statutory recognition of optometrists is asked. I agree that this is necessary. *I recommend that where the words "medical, surgical and dental aid" appear in lines three and four of section 51 (1) and in lines one and two of section 51 (2) the word "optometrical" should be inserted immediately after the word "surgical" so that the phrase would read "medical, surgical, optometrical and dental aid."*

CHIROPODISTS

The Board of Regents under The Chiropody Act objected to the requirement by the Board that when treatment exceeds six weeks an examination by a medical doctor is required. It was explained that eight to ten weeks treatment is usually required. I do not accede to this submission. It is a proper matter to be left to the decision of the Board.

APPARATUS AND CLOTHING

Section 51 of the statute provides, in addition to medical aid, for the supply to injured workmen of artificial members and dental apparatus. The section presently reads as follows:

> "**51** (1) Every workman entitled to compensation under this Part, or who would have been so entitled had he been disabled for three days, is entitled to such medical, surgical and dental aid, the aid of drugless practitioners registered under The Drugless Practitioners Act, the aid of chiropodists registered under The Chiropody Act, and hospital and skilled nursing services, and, in the discretion of the Board where a workman is rendered helpless through permanent total disability, such other treatment, services or attendance as may be necessary as a result of the injury and is entitled to such artificial member or members and apparatus and dental appliances and apparatus as may be necessary as a result of the injury, and to have the same kept in repair or replaced when deemed necessary by the Board".

The Board has interpreted the last part of this subsection as giving it authority to furnish apparatus and dental supplies in all cases where needed and has not restricted the furnishing of such supplies to those who are rendered helpless as the section may appear to require. At the very best, *subsection (1) is ambiguous and I shall recommend an amendment to make it clear that entitlement to all such apparatus is not conditional upon a permanent disability.*

Subsection (3) of section 51 provides for the replacement and repair of an artificial member or apparatus damaged as a result of an accident. Perhaps unintentionally this subsection provides for the repair and replacement of artificial members and apparatus on a narrower basis than subsection (1). There seems no valid reason for the distinction in the treatment accorded the workman in the first instance where injury gives rise to the need of the appliance and the second instance where the appliance has been damaged in the course of another injury.

In order to eliminate any disparity between the two subsections I propose that a further provision be added, perhaps most conveniently in subsection (2), by referring to the present subsection (2) as paragraph (a) of subsection (2) and the following as paragraph (b) of that subsection:—

> "(b) *The term 'apparatus' as employed in subsections (1) and (3) of this section shall include artificial members and associated apparatus, dental appliances and apparatus, eyeglasses and hearing aids and such other items as may be determined by the Board*".

Subsections (1) and (3) might then be reduced in form so as to make reference to "apparatus" only, relying upon the definition section to incorporate in these subsections the full meaning of apparatus.

The present provisions of section 51 (1) and my proposed amendments are dependent upon the happening of an accident which occasions personal injury to the workman entitling him to other benefits under the Act. The entitlement of the workman to the repair or replacement of apparatus under sub-section (3), however, is not dependent upon injury alone but only upon an accident "arising out of and in the course of his employment". In other jurisdictions, the provisions analogous to both subsections are predicated upon personal injury only. The recent review of the British Columbia statute by Mr. Justice Tysoe did not result in any recommendation that the requirement of personal injury be removed in the provision analogous to subsection (3). I am not aware, however, that any difficulties in administration or inequities result from the present provision in the Act and therefore I make no recommendation.

In the evidence given before me by the Director of Medical Services for the Board, it was pointed out that artificial limbs and appliances often caused abnormal wear and tear on clothing. The Act makes no provision for compensation for this. Dr. Powell expressed the view that such a claim was valid and reasonable and that there is no doubt that this abnormal wear and tear is an important consideration, particularly in the case of women workers. Similarly, there is no provision for damage to clothing as a result of accident. Dr. Powell stated that the province of Alberta in 1965 authorized its Board to provide for the replacement or repair of clothes damaged or destroyed in an accident.

United Steelworkers, in their submissions, requested that damaged clothing be the subject of an allowance in the same way as damaged appliances. The United Electrical Workers made a similar submission, pointing out particularly that the abnormal wear and tear is important in connection with footwear, which may also be of a rather expensive type by reason of an appliance or artificial member.

It will be recognized that a broad provision authorizing the repair or replacement of clothing damaged in an accident, with or without injury to the workman, could be the subject of widespread abuse and would be difficult for the Board to administer efficiently. For this reason I do not include the item clothing in the definition of apparatus. However, the repair and replacement of clothing worn out or damaged by reason of the wearing of an artificial member is in a different category. Having regard to the foregoing submissions and to the general pattern of this statute, *I recommend that section 51 be further amended by adding a new paragraph (b) in section 51 (3) as follows:—*

"(b) *for the repair or replacement of clothing worn or damaged by reason of the wearing of apparatus supplied by the Board to the workman under this Act*".

The present sub-section (3) would then be revised by identifying all the present sub-section (3) other than the first two lines as paragraph (a).

As amended to incorporate the foregoing recommendations as well as that to shorten the waiting period referred to elsewhere, section 51 would then appear in part as follows:

"**51** (1) Every workman entitled to compensation under this Part, or who would have been so entitled had he been disabled for one day, is entitled to such medical, surgical, optometrical and dental aid, the aid of drugless

practitioners registered under The Drugless Practitioners Act, the aid of chiropodists registered under The Chiropody Act, and hospital and skilled nursing services, and apparatus as may be necessary as a result of the injury, and to have the same kept in repair or replaced when deemed necessary by the Board, and in the discretion of the Board when a workman is rendered helpless, through permanent total disability such other treatment, services or attendance as may be necessary as a result of the injury.

(2) (a) In this Act, "medical aid" means the medical, surgical, optometrical and dental aid, the aid of drugless practitioners registered under The Drugless Practitioners Act, the aid of chiropodists registered under The Chiropody Act, and hospital and skilled nursing services, and where required, such other treatment, services or attendance and the apparatus and repair above mentioned.

(b) The term "apparatus" as employed in subsections (1), (2) and (3) of this section shall include artificial members and associated apparatus, dental appliances and apparatus, eyeglasses and hearing aids, and such other items as may be determined by the Board.

(3) The Board may pay and, where the employer is individually liable, the Board may order the employer to pay

(a) for the replacement or repair of apparatus of a workman that is damaged as a result of an accident arising out of and in the course of his employment, and, where the workman is unable to work because of such damage, he is entitled to compensation as though the inability to work had been caused by a personal injury within the meaning of subsection 1 of section 3;

(b) for the repair or replacement of clothing worn or damaged by reason of the wearing of apparatus supplied by the Board to the workman under this Act".

INDUSTRIAL DISEASES AND MEDICAL CONSIDERATIONS

GENERAL

A great deal of evidence was heard regarding industrial diseases and many submissions were made. While the statutory references are long, I feel that sections 1 and 116 must be set out in full as follows:

"1. (1) In this Act, . . .

(i) 'industrial disease' means any of the diseases mentioned in Schedule 3 and any other disease peculiar to or characteristic of a particular industrial process, trade or occupation;"

"116.—(1) Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed or his death is caused by an industrial disease and the disease is due to the nature of any employment in which he was engaged, whether under one or more employments, the workman is or his dependants are entitled to compensation as if the disease was a personal injury by accident and the disablement was the happening of the accident, subject to the modifications hereinafter mentioned or contained in the regulations, unless at the time of entering into the employment he had wilfully and falsely represented himself in writing as not having previously suffered from the disease.

(2) Where the compensation is payable by an employer individually, it is payable by the employer who last employed the workman in the employment to the nature of which the disease was due.

(3) The workman or his dependants, if so required, shall furnish the employer mentioned in subsection 2 with such information as to the names and addresses of all the other employers by whom he was employed in the employment to the nature of which the disease was due as such workman or his dependants may possess, and, if such information is not furnished or is not sufficient to enable that employer to take the proceedings mentioned in subsection 4, that employer upon proving that the disease was not contracted while the workman was in his employment is not liable to pay compensation.

(4) If that employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer, he may bring such employer before the Board and, if the allegation is proved, that other employer is the employer by whom the compensation shall be paid.

(5) If the disease is of such a nature as to be contracted by a gradual process, any other employers who employed the workman in the employment to the nature of which the disease was due are liable to make to the employer by whom the compensation is payable such contributions as the Board may determine to be just.

(6) The amount of the compensation shall be fixed with reference to the earnings of the workman under the employer by whom the compensation is payable, and the notice provided for by section 21 shall be given to the

employer who last employed the workman in the employment to the nature of which the disease was due and the notice may be given notwithstanding that the workman has voluntarily left the employment.

(7) Where the compensation is payable out of the accident fund, the Board shall make such investigation as it deems necessary to ascertain the class or classes against which the compensation should be charged and shall charge or apportion the compensation accordingly.

(8) If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of Schedule 3 and the disease contracted is the disease in the first column of the Schedule set opposite to the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved, but, except where the Board is satisfied that the disease is not due to any other cause than his employment in Ontario, no compensation is payable under this section unless the workman has been a resident of Ontario for the three years next preceding his first disablement.

(9) The Board may appoint such medical officers as may be required to carry out *The Mining Act* with regard to the examination of employees or applicants for employment, and the remuneration and expenses of such officers shall be paid out of the rates imposed for payment of silicosis claims.

(10) Nothing in this Act entitles a workman or his dependants to compensation, medical aid or payment of burial expenses for disability or death from silicosis unless the workman has been actually exposed to silica dust in his employment in Ontario for periods amounting in all to at least two years preceding his disablement.

(11) Nothing in this section affects the right of a workman to compensation in respect of a disease to which this section does not apply if the disease is the result of an injury in respect of which he is entitled to compensation under this Part.

(12) The provisions of this section relating to silicosis apply *mutatis mutandis* to pneumoconiosis and stone worker's or grinder's phthisis.

(13) The Board, subject to the approval of the Lieutenant Governor in Council, may declare any disease to be an industrial disease and may amend Schedule 3 accordingly."

I shall have occasion as I proceed, to mention and discuss various portions of section 116 but in general, the criticisms, all by labour representatives, have been in connection with Schedule 3. The provision for Schedule 3 is set out in subsection (8) above and its purport is to give a workman the benefit of a presumption in his favour if he has suffered from a disease disability mentioned in the first column while employed in the process mentioned in the second. Schedule 3 has been in the Act since its beginning in 1915 when only six diseases were named. Since that time additions have been made to bring the total to 15 classes.

Labour representatives at the hearing complained that the Schedule had not been kept up to date. The submission they made was that other industrial diseases should be added now as compensable diseases and that the schedule should be periodically up-dated. They complained that the Board's policy of relying on the second part of the definition of "industrial disease", section 1 (1) (i), instead of listing a disease in Schedule 3, is inadequate because a workman may incur a disease caused by conditions of his employment without being able to prove that the disease is peculiar to or characteristic of the particular occupation and "due to the nature of the employment." By adding specific diseases to Schedule 3, a workman would gain the benefit of the presumption provided in section 116 (8).

It is to be noted that all the provinces have schedules of industrial diseases comparable to Schedule 3 of the Ontario Act. In British Columbia, Manitoba and Ontario, in addition to the diseases listed in the schedules, compensation is paid for any disease peculiar to an industrial process, trade or occupation and in Alberta and British Columbia the definition of "accident" permits the Board to pay compensation for any disease which is proven to have been contracted in a workman's employment. In several of the other provinces the list of industrial diseases in the Schedule is much more extensive than in Ontario and the schedules have been added to and revised from time to time. In Ontario there has been no addition to Schedule 3 for some years and the Board now treats it simply as a working guide. Dr. Powell, Director of Medical Services for the Board, was the first to admit that the Schedule had not been kept up to date in the sense that it does not list all diseases due to particular or peculiar work conditions, but he pointed out that, in fact, a very much larger group of diseases are recognized in practice by the Board as industrial diseases. He indicated that the Board's reluctance to continue to add diseases to the Schedule was by reason of the difficulty in listing all diseases that can arise in industry, there being at least half a million materials and substances in use in industry today whose use by employees could give rise to industrial disease. The Board's policy is that of a continuous review of new industrial processes rather than the addition of specific diseases and processes to the Schedule as they appear. Instead of listing these in Schedule 3, the Board relies on the second part of the definition contained in section 1 (1) (i). From the standpoint of the unions, as I have said, this policy is not acceptable because they believe that the failure to add new diseases to the Schedule results in workmen in certain industries being denied the benefit of the presumption which, they feel, where it exists, makes it less difficult to establish a claim.

The Board does not keep an official published list of the diseases other than those listed in Schedule 3 that have been recognized as compensable industrial diseases. It does, however, keep card files on all substances and agents which have been accepted as causing occupational diseases and these are available and constantly referred to in the claims adjudication section which deals with occupational diseases.

In most of the topics under industrial diseases which I shall later deal with individually, the main contention has been that the disease in question

should be given a place in Schedule 3. Also, in the brief of the United Steelworkers reference was made to particular illnesses recognized by other provinces but not included in Schedule 3 of the Ontario Act.

In Ontario research regarding industrial disease is in the hands of the Department of Health. In that Department the Environmental Health Branch has responsibility for all occupational health matters as well as such things as radioactivity, air pollution, pesticide control and public health engineering and sanitation. Of a total complement of 217 people in the branch, 60 to 70, of whom a number are doctors, concern themselves wholly with occupational diseases and medical health. This section which deals with the effects of materials, processes, substances and agents which can affect the health of the worker maintains a close relationship with the Board. The Director and others of his staff attend weekly at the Board offices to advise on such matters and the Board in turn seeks advice or research by the branch in fields which come to its attention through claims. It was the opinion of members of the branch who gave evidence that inclusion of further items in Schedule 3 is unnecessary. I quote from some of this evidence.

Dr. Mastromatteo, of the Environmental Health Branch of the Department of Health stated:

> "I think I have said here there are so many chemical agents that it would be very difficult. You raised the question that if something is not scheduled then, by inference, it may not be covered. I think that it would be a very difficult task to schedule every occupational disease. There are books on industrial diseases and there are literally thousands of diagnoses made which could pertain to occupational disease. I think the schedule is useful in a historical way in setting down the well-known occupational diseases and this business of presumption is an important one, but I think the blanket coverage is of a sufficient latitude for people with experience and the ability to investigate to render, I think, valid opinions on the relationship between the job and the healthy condition or normal condition or unhealthy condition reported."

He went on to deal individually with the diseases mentioned in the brief of the United Steelworkers as they appear in the schedules of other provinces and pointed out that all, though not included in Schedule 3, are recognized by the Board as arising from the work hazards mentioned. He said that no difficulty about securing compensation would be experienced here where those work situations exist. Dr. Sutherland, Director of the same branch in turn testified:

> "This is quite true. I would like to say that The Compensation Board is essentially a practical organization. If a man claims to have been suffering from exposure at work from gas, vapour, solvent or whatnot, they will ask questions of people who should know and if there is any evidence to say yes this is so, they will go ahead and compensate, regardless of whether it is in Schedule 3. They can always do it under the blanket clause."

Again in another part of the evidence the following appears:

"THE COMMISSIONER: To go back to your report, there is only one thing. Referring to the report of Mr. Justice Roach in which he recommended certain changes in Schedule 3 to which you would add manufacturing silica brick in the steel-making industry, are you suggesting any change in column 2 of the Schedule 3 having regard to silicosis or is that adequate as it stands?

DR. SUTHERLAND: I don't personally see the necessity of putting it in Schedule 3, as the cases are being handled properly or handled just as in the other cases at the moment, silicosis whether it is Schedule 3 or not. As I say, the Board is practical."

I have quoted from but a part of the evidence of the doctors named. In general it was to the effect that the Board keeps on hand an up to date list, which it constantly amends, of work conditions in certain industries which give rise to a presumption that named diseases suffered by workmen in those industries arise from the work environment. All the doctors who gave evidence, of whom I have mentioned but a few, appeared to be satisfied that the Board seeks to deal in the fairest fashion with claims that come before it. If I felt from the evidence to which I have listened that any workman is likely to suffer from a failure to list a disease in Schedule 3 which is established as a work hazard I should have no hesitancy in recommending that the Schedule be amended to list all such diseases no matter how extensive the list would need to be or how often it would need to be amended. Suffice it to say that I am not so convinced, particularly so when I note that barely four per cent. of all claims submitted to the Board are turned down. As a consequence I shall make no recommendations in this report for any addition to Schedule 3.

Notwithstanding this I shall discuss the topics hereunder on their merits as the real issue in most is whether or not the disease mentioned should be listed, if not in Schedule 3, at least on the Board files as a work hazard in the particular occupation mentioned. I have also in mind that my recommendation against further additions to Schedule 3 might not be followed in which event the legislative authority should have the benefit of a report from me regarding the particular ailments which, it has been urged, should be included in a revised schedule.

PRE-EXISTING CONDITIONS AND SECOND INJURY FUND

In most cases the injury sustained at the time of the accident is the only factor to be considered in the resulting disablement. However, in some cases pre-existing conditions which may or may not have been evident prior to the accident affect the degree of disablement and therefore the workman's entitlement. Pre-existing conditions may be divided into two categories, those which are measurable and those which are non-measurable. Included in the first group are obvious defects such as impaired vision, amputations, joint fusions and skeletal deformities. The second group comprises latent conditions brought to light by superimposed injury or precipitated by injury resulting in disability

out of proportion to the injury itself, examples being diabetes, arteriosclerosis, weakness of the large blood vessels, allergic manifestations, thin skulls and degenerative skin disease.

Where a pre-existing condition is aggravated by accident to the extent that it becomes disabling and the evidence confirms a causal relationship between the disability and the accident, entitlement to compensation is granted. Where permanent disability results from the accident the residual disability is considered for an award and where the pre-existing condition is a measurable defect, such as an amputated finger, the pension is generally based on the total entitlement for the entire disability less the percentage assessment of the pre-existing defect.

The Second Injury Fund was created by the Board in 1944 and is made possible by the provisions of section 102 (2) of the Act. The purpose of the fund is to encourage employers to hire disabled workers by relieving employers of charges arising from any increased compensation costs, where additional disablement occurs, by reason of the prior physical defect of the workman. The cost charged to this fund is the difference between the disability attributable to the recent injury and its increased value because of the prior defect. The fund is established by an overall assessment against all employers. Where the pre-existing condition was a latent one and had no assessable value until aggravated by the accident, the pension is based on the extent of the permanent disability. In most cases 50 per cent. is charged to the Second Injury Fund. An illustration of the manner in which the fund operates is that of a man who has already lost his right index finger (rated on the Board scale at 4 per cent.). He is then hired but later loses his left index finger in a compensable accident, a further 4 per cent. disability over the pre-existing 4 per cent. In the case of impaired organs and limbs such as the ones mentioned the Board has a procedure which allows an enhancement factor amounting to one-half the value of one lost member, that is, the two fingers together would be considered as an 8 per cent. disability to which would be added an enhancement figure of 2 per cent. In the example cited, the workman would receive a 6 per cent. disability pension made up of 4 per cent. for the finger which was compensable plus 2 per cent. for the enhancement factor. Two per cent. would be charged to the Second Injury Fund. The workman would not receive 10 per cent. because the first finger was lost before he entered employment. There are also enhancement factors for the loss of other organs. The only exception to the general rule as stated is in the case of total blindness. If an eye has been lost as a result of a non-compensable injury and another eye is lost in a compensable accident resulting in total blindness, no deduction is made from the pension award for the pre-existing defect. The Board pays upon the basis of 100 per cent disability charging 16 per cent (for the second eye) to the employer class involved in the compensable accident and 84 per cent to the Second Injury Fund.

Until 1964 it was the practice where there were pre-existing conditions for the Board to make awards upon the basis of 50 per cent. of the established disability, half of which was charged to the Second Injury Fund, where an award was increased by reason of the fact that a workman was suffering from

(a) diseases or conditions which impaired the circulation in any part of the body sufficient to increase the permanent disability from an injury, for example, diabetes or Buerger's disease or (b) latent conditions, not including arthritis generally, brought to light by superimposed injury or precipitated by injury, resulting in disability out of proportion to the injury itself, for example, coronary occlusion or fractures involving joints.

It was to this provision that Mr. Justice Roach, in his report, had reference when he spoke of a workman suffering from diabetes who sustains a very minor injury to a toe due to a weight falling on it. His diabetic condition aggravates that injury and it becomes so serious that the whole foot has to be amputated. At the time of the previous Royal Commission the Board informed Mr. Justice Roach that, in the case illustrated, it would consider the loss of the foot as having been partly caused by the pre-existing diabetic condition and would award the workman 50 per cent of the amount which would normally be awarded to him for the loss of a foot. It was the opinion of Mr. Justice Roach that such a policy was wrong and he recommended the addition of a new subsection to section 2 to read:

> "Where an accident causes any injury to a workman and that injury is aggravated by some pre-existing physical condition inherent in the workman at the time of the accident, the workman shall be compensated for the full injurious results save only where the pre-existing condition is due to an injury for which the workman is then receiving compensation or was at some earlier date receiving compensation which has been commuted."

Dr. Kavanagh for the Board advised that since 1964 the treatment of a case such as the one referred to has changed by reason of a Board order dated December 2nd, 1964 which withdrew a portion of the previous Board order discussed by Mr. Justice Roach. Under the new policy the workman in Mr. Justice Roach's illustration would receive his full pension and not just 50 per cent thereof and half the award would be charged to the Second Injury Fund. In an illustration given by Dr. Kavanagh the percentage disability allowance for the loss of an arm is now 70 per cent where under the previous policy the workman whose pre-existing diabetes contributed to the loss would have received 35 per cent. Half of the 70 per cent is deducted for the pre-existing condition and 35 per cent of the award as a consequence is charged to the Second Injury Fund.

The submissions of those speaking for labour are that there should be an amendment to the Act in the terms suggested by Mr. Justice Roach. He had in mind, of course, the type of injury which he used as an illustration where, in a court action, the injured man would be allowed full compensation notwithstanding his previous disability. The principle in that case was justified upon the premise that notwithstanding his disability, the man in question might have worked throughout his life without disablement had it not been for the "accident." The Board follows this principle today in back injury cases, heart cases and other cases of the kind but, of course, an "accident" must first be established. In other words, where unusual stress can be confirmed, an award for a heart seizure is allowed, or, where the work or some incident accounts for a back injury, compensation is allowed notwithstanding the previous disability

of the person in question. It would seem that what is sought on behalf of labour in the submissions made is a right to full compensation in all cases where the terminal disablement occurs at work or by reason of the employment. To accede to this suggestion would preclude the Board from making any allowance in its assessment for a medical condition in the workman where, due to his previous condition, it was inevitable under any circumstances that he would be unable to work for more than a limited time. As explained to the Commission many workmen even with marked conditions such as arthritis of the spine might work without discomfort for their working lifetimes. Such cases, when injury occurs, receive full compensation for it cannot be said that disablement would ever have come about in the absence of the precipitating injury. But in a case such as I mentioned where a workman's shortened working years can be assessed with some accuracy the Board does not assess full compensation for permanent disability. I cannot disapprove of this policy for to do so would be contrary to the principle that the employer's liability under the Act is not to exceed the degree of loss attributable to the employment. I do not recommend a change of the nature suggested.

On the part of employers two submissions were made. The first was that when the terminal injury has resulted from an activation or acceleration of a previous injury any compensation should be limited to that attributable to the injury. It was suggested that there be included in the Act a provision similar to section 7 (5) of the British Columbia Act which reads:

> "Where the personal injury consists of injury or disease in part due to the employment and in part due to causes other than the employment or where the personal injury aggravates, accelerates, or activates a disease or condition existing prior to the injury, compensation shall be allowed for such proportion of the disability as may reasonably be attributed to the personal injury sustained."

I am not in accord with this suggestion. The Board has the power, and exercises it, in proper cases to limit compensation to that portion of a disability which may be attributable to the accident. It should not, however, be limited so as to preclude it from allowing full compensation in cases such as those previously mentioned. I am afraid that an amendment of the nature suggested would have that effect. I cannot recommend it.

The other submission was that an assessment against an employer should be restricted to that portion of the cost attributable to that employer. This, I believe, has reference to certain instances where the full cost is assessed against the employer and no contribution is received from the Second Injury Fund. I have referred to cases where men employed with known disabilities later suffer severe ones entitling them to increased or full compensation. In these cases the Board relieves the employer through the Second Injury Fund of part of the cost. But where there has been no previous indication of trouble when the injury happens and full compensation is awarded it is the practice of the Board, I understand, to charge the full compensation to the class concerned. It is also noted on the individual employer's cost statement.

In view of the fact that the Fund we are discussing was established to encourage employers to take on men who might otherwise be risks I am of the opinion that it should be utilized to relieve the employer in the latter case as well as in the former. If this is not done employers who now complain of mounting assessments will be less ready to employ anyone about whom there might be any medical doubt.

I recommend that in all cases where compensation may involve activation or aggravation of a pre-existing condition a portion of the compensation awarded be paid from the Second Injury Fund.

ARTHRITIS AND RHEUMATISM

The International Union of Mine, Mill and Smelter Workers (Canada) submitted that these two conditions should be included in Schedule 3 for workers in mines by reason of the fact that they, particularly if employed in underground operations, are subject to continuous repetitive stress. They also are exposed daily to wetness, cold and draughts involving wide variations in temperature. These situations, it was said, are generally recognized as precipitating causes of the two conditions mentioned.

The Labourers' International Union made similar submissions to the effect that arthritis and rheumatism should be recognized by the Board as industrial diseases and be included in Schedule 3. This union was interested, in particular, in certain phases of the construction industry involving underground work and continued exposure to wetness, draughts, cold weather, wide variations in temperature and repetitive stress.

The Commission called Dr. J. N. Swanson, a fellow of the Royal College of Surgeons and a widely recognized authority, to advise on the submissions made. Dr. Swanson had done six years research in these matters, two years in Britain, two years at Harvard Medical School and two years in Toronto hospitals. He had been medical director of the Canadian Arthritis Society in Ontario from 1960 to 1964 and was President of the Canadian Association of Occupational Therapists from 1960 to 1966. He introduced his evidence by some definitions of the different types of arthritis of which there are many. He drew a major distinction between joints containing fluids such as finger or knee joints known as synovial joints and those between bones joined by fibrous tissue, such as those between the back and the pelvis. Trouble in the latter is usually referred to as osteoarthritis. He said there was no real distinction between arthritis and rheumatism, the latter being a general term with no specific significance. Rheumatism is in common use as a term in Great Britain but in this country joint disorders are usually referred to as arthritic ones. On the particular matters which he was called upon to discuss he cited a study of coal miners in England where conditions of wetness and cramped quarters prevailed in the mines. In this study, back injuries to the discs of coal miners were compared with those of dock workers, manual workers and office workers employed elsewhere. The studies were carried out in 1950 and 1951 by Dr. Keldron, the first Professor of rheumatology in the British Commonwealth, with the assistance of Dr. John Lawrence, now considered a world authority on the epidemiology of arthritis.

The studies resulted in the finding of severe radiological changes of disc degeneration in the lumbar spine in 43 per cent of coal miners as compared with 7 per cent in office workers. Only 8 per cent of miners had radiologically normal spines compared with 67 per cent of office workers. The findings among manual workers such as engineers, painters and bricklayers were intermediate but nearer to the office workers than the miners. Dock workers showed changes intermediate between those of the miners and light manual workers. Dr. Swanson pointed out that the coal miners under study worked largely with pick and shovel and there was not the mechanization in those mines that there is today in the Ontario mines. In addition the Northern Ontario mines are largely hard rock mines where there are differences in the height of the working space and comparative absence of the low seams and cramped quarters leading to stooping that occurred in the mines studied in England. The result of the English study was a conclusion that trauma, exposure to wet and working in a stooping position aggravated the symptoms and disability. Osteoarthritis of the knee also was found to be common among miners who pushed heavy trucks and was commoner at the elbow, wrist and hand in miners than in those occupied in other occupations which were studied.

Dr. Swanson stated that weather and climatic conditions such as humidity and barometric pressure have a definite effect on those suffering from arthritis but it is not to be implied that climatic changes have any direct bearing on the cause of arthritis nor is it believed that a constant climate would have any fundamental curative effect. In other words, dampness aggravates pre-existing symptoms but does not cause them. Similarly, prolonged exposure to a cold, damp atmosphere will probably not cause arthritis but it can lower the body's resistance and trigger an attack if one has already contracted rheumatoid arthritis which is said to exist in from three to four per cent of the people in any given community. He went on to say, referring to the effect of wetness or dampness on the degenerative form of osteoarthritis, that the study in England indicated that those working in wet conditions had more back-hip sciatic pain than others and that, in miners, the relationship between position at work and spinal symptoms with incapacity was great. In other words, the more stooping the work involved, the more affected was the man who was doing it. He referred as well to a study among Pennsylvanian miners in which substantially the same conclusions were reached as in the British study. Once again, however, the study was of coal miners. The general conclusion was that degenerative changes of the lumbar intravertebral discs were not solely to be accounted for by aging and that the duration of heavy work by coal miners, although it has no bearing on the development of disc changes, is associated with spurring which he described as damage to the tissues around the disc rather than to the disc itself. He knew of no studies having been conducted other than the two which he had mentioned.

In concluding, Doctor Swanson stated that posture, bending, stooping, twisting, lifting, wetness and air velocity (draughts) could be considered to aggravate arthritic conditions in the circumstances where the two studies were carried out. He was not prepared to say, however, that these were sufficient to be considered causative factors in Ontario mines. He had seen no evidence that they were

but he had never worked in a mining community. He had, however, seen the cases which came from all parts of the province. It was his opinion that the whole question of arthritis and rheumatism is so important that it should be the subject of a study which would require about a year's work by somebody of the calibre of Dr. Lawrence who performed the English study, with an assistant who might be another doctor or a social worker to help with the necessary interviews.

Looking at the various provinces of Canada one finds that arthritis and rheumatism are not included in any schedule in any province. Bursitis, however, is included in Ontario, Newfoundland, Prince Edward Island, Quebec, Saskatchewan, British Columbia, New Brunswick and Nova Scotia. Cellulitis finds a place in the schedules of Alberta, British Columbia, Newfoundland and Nova Scotia. Tenosynovitis and tendonitis appear in the schedules of British Columbia, Newfoundland, Nova Scotia, Ontario, Quebec and Saskatchewan.

Conclusion

There can be no doubt that there is a widespread opinion in the northern communities where people work underground as well as among those who work in the construction industry, that workmen who develop arthritic troubles are justified in attributing them to the nature of their work. However, there is no evidence before this Commission to establish that to be the case. As is generally known arthritic troubles are prominent among the public at large. *There is sufficient in Dr. Swanson's evidence, however, to justify a strong recommendation on my part that a research project be undertaken to study the incidence of arthritis and rheumatism among miners when compared with that suffered by workmen in other occupations. I recommend that the Board, either by itself or in co-operation with other authorities, add this project to the research projects it already has in hand.*

CAISSON DISEASE

Caisson disease or compressed air illness arises from extreme pressure on the body causing tiny bubbles to form in the circulation which plug small blood vessels and cut off the blood supply to various parts of the body such as skin, joints, lungs, and chest and which may produce serious effects. Symptoms of the disease may not appear immediately after the damage has been done and on occasion are delayed for many months. The disease is covered by section 116 of the Act and is included in Schedule 3 to cover those employed in any process where they work under compressed air. A great deal of evidence concerning it and relating to working conditions was led by the Labourers' International Union, members of which are largely employed in excavating sewers, tunnels and other works of that nature. The union submitted that caisson disease is difficult to detect and many men have not realized that they have contracted it. As a consequence, when it later develops, they are not able to attribute the resulting disease or disabilities to its initial causal effect for the purpose of entitlement to compensation. The case was cited of a man who had worked under compressed air, had died several months later of a heart attack and had received no compensation because of lack of evidence showing any causal relationship with his previous work. Reference was made to Ontario regulation 100/63, as amended by O.R. 123/63, of the Department of Labour in which requirements to

be observed by a company employing people working under compressed air are set out. The regulation also outlines certain mandatory provisions for medical examinations of those employed in such work. Objections taken by the union to the medical procedure and allegations regarding it were as follows:

(a) the medical examinations are very superficial with as many as 20 men being examined by one doctor in the space of half an hour;

(b) examinations are sometimes delayed until after the men start working in the tunnel;

(c) medical information obtained from the cursory examination is insufficient to determine whether the man is medically fit to work in compressed air;

(d) the present form of examination is insufficient to provide the Workmen's Compensation Board with adequate evidence to establish causal relationship between the work and the diseases and the disabilities that may result from caisson disease;

(e) the information furnished the union was that the proper examination should take one and a half hours for each person and should include x-ray of all joints of the body including the head and chest and a cardiograph of the heart;

(f) although regulations provide that a doctor be available at all times he is often available only once a week;

(g) the examination should be a detailed one and carried on and sponsored by the Workmen's Compensation Board and a doctor appointed by the Board should be responsible for the examination;

(h) the examination should be held every two weeks instead of every two months as at present. This recommendation was based, it was said, on the advice of Dr. Gamarra who had made a study of caisson disease;

(i) a medical lock or decompression chamber, as required by the regulations, should be made available at all pressure projects. These, it was said, had not always been available and in some cases, where available, had not been connected for immediate use.

In addition to the above the union made these further specific recommendations:

(a) that the Workmen's Compensation Board make available to all employers using compressed air and public officials, such as police and firemen, information concerning the diagnosis and treatment of the 'bends' and the use of decompression chambers;

(b) that the inspection system for decompression chambers be revised to ensure absolute compliance with the regulations under The Department of Labour Act;

(c) that these matters should be the concern of the Workmen's Compensation Board because it is concerned with accident prevention.

A memorandum on caisson disease was filed by the Board and evidence concerning it was given by its Director of Medical Services, Dr. Powell. He stated that the Board deals with claims for caisson disease in the same manner as for other scheduled diseases. Diagnosis and exposure are established and medi-

cal aid and compensation entitlement are assessed in the usual way. Where evidence of a condition related to caisson disease, such as a bone change, has not become apparent until some time after exposure, the claim will be considered as of the later time and the usual criteria will apply. He pointed out that the regulations referred to by the Labourers' International Union had been completely revised in 1963 and other evidence discloses that they are under constant review.

He went on to say that in 1964 the Board had installed a large permanent pressure chamber at the Toronto General Hospital. Prior to that time the nearest permanent chamber was in Buffalo, New York. The new chamber provides emergency treatment at all hours for those suffering from caisson disease. Pamphlets describing the new chamber and its use with details of the symptoms of caisson disease have been distributed by the Board. He also informed the inquiry that one of the Board's research projects had been on caisson disease, Dr. Gamarra having been retained for that purpose. This study which was quite a lengthy one had been completed by July 31st, 1966 but the material had not been collated at the time of these hearings and Dr. Gamarra was unable to submit his report. On the medical aspect, Dr. Mastromatteo of the Environmental Health Branch of the Department of Health dealt with the sequelae or after effects occurring in workers who have had caisson disease. He said that the sequelae are reported in medical literature at considerable length and are well known to the medical profession. Those such as bone and neurological disorders and changes will be accepted as compensable but, on the question of the heart and the relationship between heart disease and caisson disease, he had formed the overall view that evidence was lacking to indicate that work under increased atmospheric pressure was responsible for subsequent heart failure. He pointed out that heart disease has many causal relationships and that so many factors are involved when trying to assess heart disease in an individual that no dogmatic statement linking the disease with a specific work situation can be made. Commenting on the need for thorough or routine physical examinations to determine in advance whether a workman would be susceptible to the "bends," the doctor expressed his opinion that such an examination would be of assistance in disclosing (a) ear drums that were not intact and might therefore be damaged because of the change in pressure in the ear canal; (b) high blood pressure or hypertension and generally poor physical condition, people suffering from these conditions being less able to tolerate the physical stress of pressure than those in good condition; and (c) any bone disease that might be revealed by x-ray.

The Board does not enforce regulations governing work under increased atmospheric pressure, that matter coming under the Department of Labour. But it has drawn up a data sheet which is distributed to every physician attending at physical examinations of workmen on pressure projects. This is in effect a briefing which is given once per project, the Board being notified by the Construction Safety Branch of the Department of Labour each time there is a project involving atmospheric pressure. Dr. Mastromatteo was of the opinion that a good medical examination as required by the regulations should take from 30 minutes to 60 minutes. This, however, was left to the physician, who was

required to assure himself as to the length of the examination and the criteria he selected for determining a man's suitability to work under pressure conditions. The Labourers' International Union, which has an alert and vigorous management, called extensive evidence in the above matters which extended to the operation of the equipment on the air compression sites as well as to medical questions. It was realized that in general these were subjects coming under the control of the Department of Labour which by its regulations not only lays down the conditions under which any work is to be carried on but is also responsible for prosecuting those who violate the regulations. It was the submission of this union, however, as well as of others, that the regulation and enforcement of safety measures should be brought within the jurisdiction of the Board and this submission was supported at the hearings by evidence and argument.

I have dealt with this matter elsewhere in my report and for the reasons there stated I am not prepared to recommend a change in the present division of authority which limits the Board to the furnishing of safety information and assistance in advising on safety measures such as it now gives. Complaints regarding medical examinations and physical conditions at the work site must, accordingly, be made to the Department of Labour. Under the circumstances, as all the submissions of the union have relation to enforcement of regulations which do not come under the Board's supervision, I am unable to make any recommendations in this case other than one. *It was stated on behalf of the union that the pamphlets describing the new compression chamber and its use together with details of the symptoms of caisson disease and its treatment have not been reaching the hands of those at work on compressed air projects. My recommendation is that the Board take steps to make certain that a free circulation of these pamphlets occurs on every new project where compressed air is used.*

PSYCHOSIS AND NEUROSIS

Psychosis is the term applied generally to any kind of mental disorder, especially where the disorder is serious and characterized by lack of insight as distinct from psychoneurosis. Four major groups are noted in a memorandum furnished by the Board:

(1) *psychosis from brain damage.* This is where the personality disorder is the direct result of a compensable injury, usually involving brain damage following trauma. The Board assumes responsibility for treatment, payment of compensation and permanent disability awards in such cases. There is a Head Injury Committee of the Board which decides on the form of treatment;

(2) *mental impairment with or without psychosis.* This is associated with brain damage caused by external agents such as toxic chemicals, high voltage current, caisson disease and cerebral anoxemia. Depending on the basis of reports of psychiatrists or neurologists benefits will be awarded including treatment, payment of compensation and permanent disability;

(3) *mental impairment resulting from an accident.* This occurs when a patient shows little clinical or other objective evidence of brain damage but it can be concluded from the evidence that mental illness has been

produced or precipitated by an accident, e.g., where a workman has been buried in a cave-in. The workman in such a case will be entitled to benefits but compensation will depend on the severity of the incident or situation. In the case of psychosis resulting from burial in a cave-in, for instance, full compensation would probably be awarded until the workman was rehabilitated in another position. It is relatively difficult to establish a case for compensation, however, in this type of psychosis;

(4) *reactive depressions.* Patients who have not suffered brain damage may develop severe reactive depressions following prolonged invalidism or progressive conditions. Certain of these cases may, on the evidence, be awarded compensation where the disorder is severe.

Where the psychosis is not related to compensable injury but is the result of a previous mental history or illness such as schizophrenia or manic depression the patient will be compensated for a physical condition arising from the accident but no provision will be made for permanent disability for the psychosis and the patient may be referred to Ontario Medical Hospitals or to psychiatric services of general hospitals.

Psychoneurosis as distinguished from psychosis is defined as a functional disease of the nervous system not accompanied by any demonstrable structural changes. Diagnostic differentiation between the two is often extremely difficult. In layman's terms neurosis is a break-down of emotional control as a result of stress leading to anxiety and depression but without a lack of insight. Many descriptive terms are used such as malingering (gross exaggeration of disability for the purpose of gain), anxiety states (reaction disproportionate to the event), hysterical reactions in a person who is constitutionally unstable, psychopathic personalities with or without anti-social behaviour, alcoholism, hypochondriasis, accident neurosis, poor motivation, and other terms of like intent. These terms are frequently grouped by medical authorities under an inclusive term of "functional overlay". The term does not include insanity such as schizophrenia, severe depressive reaction, epilepsy, mental deficiency and things of the kind, all these being classed as psychotic conditions.

The operating policy of the Board with reference to neurosis is based on the medical axiom that in the treatment of the psychoneurotic, hope of cure rests upon one's ability to offer the patient a greater gain than that afforded by his illness. Thus when the workman develops a "functional overlay" in relation to his compensable disability every attempt is made by the Board by way of psychiatric consultations to assist the workman to overcome this critical period. Psychiatric treatment is usually provided concurrently with other treatment if it does not prolong treatment of the compensable injury. As psychoneurosis without faculty loss or measurable clinical deformity is difficult to establish, entitlement to compensation for this condition is not common and is granted only after neuropsychiatric consultation.

As submissions in these matters have come from three particular sources I shall refer to them at length. The Mine, Mill and Smelter Workers' union referred the Commission to a report of Chief Justice Sloan of British Columbia in 1952 wherein the Commissioner said he could see no distinction in legal principle

in interpreting the word "accident" between the case of one man's suffering from a pre-disposing cause physical in its nature and that of another predisposed to an incapacitating neurosis because of some latent defect in his personality. The Commissioner felt that disabling neurosis whether caused directly by an accident or excited, precipitated or contributed to by an accident was in each case a personal injury by accident which should be compensable. Representatives of the union submitted that in cases where a pre-existing tendency to neurosis was a contributing cause of the disability, for example where it has been decided medically that the pain experienced by the workman is psychogenic in origin, the Board's practice has been to pay a portion only of the claim on the basis that the man's makeup, mental processes and tendencies have been a contributing factor. The union finds fault with this practice and asks that the Board be required to take a broader view of these cases. Its submission was that many miners are on incentive pay which subjects them to greater pressure, stress and anxiety than is the case with the ordinary workman. As a consequence, they have a higher rate of rejected claims than other workmen although their disabilities may arise by reason of the fact that they have a greater tendency to suffer mental as well as physical reactions to injury because of the physical nature of the work which they perform. A fear that he may be unable to resume that work results in a severe mental disturbance in a miner.

The submission by the Ontario Federation of Labour was that the Board should be more active in seeking to rehabilitate workmen who have had serious accidents and have been physically restored to what appears to be good health but are left with emotional disturbances. Lastly, the United Electrical Workers urge recognition of mental illness and pure fatigue neurosis as valid grounds for compensation claims. That union submitted that in a period of revolutionary change in industrial technology and the advent of automation an entirely new approach in treatment is required to deal with problems associated with the work environment in such cases. It was said that these changes result in mental, nervous and emotional illness causing disability and loss of time from work. The recommendation of the union was that the Act be amended "so that any barrier or restriction to an up-to-date approach to illnesses of the type dealt with be removed, permitting the payment of compensation, and thereby introducing a compulsion of employers to accept responsibility for remedial and preventive measures on a far broader basis than exists to-day."

Referring first to the last submission there is in fact no statutory barrier of the type described and the real objection of the union appears to be that while the Board will recommend psychiatric treatment in cases of stress and anxiety arising from repetitive work, fatigue neurosis or other conditions of the kind, it is not often that the Board will also recognize a claim for compensation. What the union actually sought was that neurosis be added as a class in Schedule 3, which would allow the workman engaged in repetitive work who suffers a neurosis to have the benefit of the presumption.

There was little evidence before the Commission on which any decision in this matter could be made. The spokesman for the United Electrical Workers Union cited reports of various medical men on neuroses and, in particular, a

paper written by certain medical authorities in Turin, Italy, reporting observations made on workers and clerks in the Fiat Motor Works there. Reference was made in the paper to the case of a man in that plant who had been employed on repetitive work and who was said to have suffered a pure fatigue neurosis. Reference was made as well at other points in the evidence to the effect of mechanization upon the workman. Dr. Mastromatteo, Chief of the Occupational Health Service, Environmental Health Branch of the Ontario Department of Health was the only medical witness to testify on the matter. I quote:

> "Dr. Mastromatteo: I am not an expert in that field but I think repetitive work does not produce neurosis. The neurosis lies in the roots of the person involved and physical work of this type would not, in my opinion, cause neurosis.
>
> Mr. Guthrie: It may contribute?
>
> Dr. Mastromatteo: I believe that the roots of this condition are largely emotional. Certainly if there is a severe physical effort, where a man was in danger of his life as some of them feel when they get bronchial pneumonia this could trigger emotional neurosis. But to me physical movements would not cause neurosis."

In the stress of modern life emotional disturbances are undoubtedly common. To attribute such a disturbance in a workman to repetitive stress alone is another matter. Studies appear to be in progress in various parts of the world on the subject and with increased mechanization of industry it is a matter to be kept under close review by the Board. Lacking medical evidence I am not prepared to make a recommendation upon it.

The same may be said for neurosis following an accident. While the Director of Medical Services for the Board stated that he had seen very few cases of malingering among the many cases that came to the Board's attention, adding neurosis as a class in Schedule 3 might make it difficult for the Board to turn down a case where malingering was demonstrated. I base my decision, however, more upon the fact that, as I interpret the evidence, the Board is very aware of the functional overlay that occurs in many cases and these cases are being handled in a careful and sympathetic fashion. The Board has a special Head Injury Committee which deals with psychiatric and neurosis cases and it has, and retains, the services of the foremost consultants in those fields. Whether compensation is paid in addition to treatment is a matter in such cases of supreme importance. While a decision to pay compensation might hasten recovery it would often have the opposite effect. These are matters which the Board must consider and does consider in every case. It is perhaps the most difficult field with which the Board must deal and no rule of thumb solution would suffice. I am satisfied that these cases are receiving sympathetic and expert consideration and that the hands of the Board should not be fettered.

On the submission that miners were more prone than others to suffer from neurosis Dr. Van Nostrand for the Board said that there was no statistical or other authority to substantiate the claim and none has been advanced to this Commission. I am quite unable to place miners in a different class from others.

If it be established in the future that it is an occupational hazard of mining it might justify the addition of such a class to Schedule 3 for the industry.

INDUSTRIAL DEAFNESS

The United Steelworkers' Union in its submissions urged that occupational deafness be added to Schedule 3 for any industry involving prolonged and continuous exposure to excessive noise. A similar recommendation was made by the Ontario Federation of Labour. It was pointed out that it is now well recognized in many industries that men are suffering occupational deafness by reason of the excessive noise in places where they must perform their work. Unlike traumatic deafness which results from a loud explosion, or injury to the head, occupational deafness develops over perhaps a period of many years and as a consequence it is said that a workman at times has difficulty in establishing that his disability was due to his employment.

Dr. Powell for the Board pointed out that industrial deafness is covered under the second part of the definition of industrial disease as it appears in section 1 (1) (i) of the Act. He went on to say that where industrial deafness is established the workman is entitled to necessary medical aid including a hearing aid. Compensation benefits are payable where a workman experiences earning impairment due to a necessary change of employment when he has to leave his previous occupation because of exposure to noise. The Board has established certain criteria on the advice of its medical consultants whereby pensions for industrial deafness are granted after the workman has been away from excessive noise for a period of at least six months. The reason for the delay is that the hearing loss due to exposure to noise in industry cannot be accurately assessed without removing the man from the noise conditions for that period. After some six months away from the noise his hearing should have improved to some degree and this would confirm a diagnosis that deafness was due to his employment. The workman who chooses to seek other employment to conserve his hearing is entitled to rehabilitation assistance.

Dr. Powell stated that industry, the Department of Labour, and the Department of Health have all developed programmes to prevent deafness by reduction of noise and by periodic audiometric checks. Where traumatic deafness is complete and the condition is not assisted by hearing aid, the allowance made is 30 per cent. But ailments are taken into account over and above the loss of hearing, such as dizziness, noises in the ear and certain other disabilities. The allowance of 30 per cent is made with relation to the nature and degree of disability and not specifically for earning impairment. The Board figure of 30 per cent is a minimum figure and if there is also vertigo the workman is allowed an extra three or four per cent. If constant headaches occur he might receive as much as 15 per cent more.

Dr. Kavanagh who also spoke for the Board said that the Board considers that a totally deaf man is not at such a disadvantage on the labour market as one who is totally blind and that for a loss of earnings as opposed to an anatomical impairment 30 per cent compensation is fair and just. It compares favourably with that in other jurisdictions as in few, if any, is a larger compensation paid.

He referred to the distinction between occupational deafness and traumatic deafness where the disability occurs suddenly as a result of a single blast or blow which is treated as an accident. Industrial deafness arises gradually under continued exposure to noise and compensation is awarded only if there is an impairment of earning capacity. The workman may be exposed to noise and suffering increasing deafness but if he is able to continue to work at full wages he is not considered to be entitled to compensation under the terms of the Act. Dr. Kavanagh stated that since 1950 when the first deafness claim was made there had been 542 deafness claims of which 283 have been allowed in the category of occupational deafness.

Dr. Mastromatteo said that industrial occupational noise has been under study by the Environmental Health Branch and that one engineer is employed whose function is to assess noise exposure in work occupations in Ontario. This official is a specialist in his field and is frequently called upon by the Board when a claim is made for compensation for occupational loss of hearing. He then carries out an investigation and reports to the Board. Dr. Mastromatteo was of the opinion that there is no high incidence of industrial deafness. He stated that there are no specific regulations of the Department of Labour or any other department which control the level of sound in industry or mining but he believes that there is sufficient coverage under The Industrial Safety Act and The Mining Act by their general regulations to deal with noise levels which are found to be excessive. He admitted the difficulty of prosecuting under such general provisions if no maximum levels are specified. He stated that the concentration was upon the enforcement of protective measures such as ear devices but said there was no compulsory means of enforcing the use of such devices. Dr. Hogarth, who also testified, was of the opinion that traumatic deafness should not be included in Schedule 3 in any event as it is due to an accident and not to a disease.

In order to have further expert evidence in this matter the Commission had Dr. Alexander Fee attend. He is an eminent ear, nose and throat specialist attached to the Toronto Western Hospital. He expressed the opinion that a man who suffers from industrial or occupational deafness has not the same disability as is suffered by the man who loses his hearing due to an accident. The industrial deafness is not so serious because its advent is gradual and affects only the high tones and persons suffering from it can carry on for many years. They gradually become accustomed to their deafness and compensate for it. The older man who suffers a traumatic loss of hearing, on the other hand has, in his opinion, an injury almost as severe in nature as total blindness by reason of difficulty in adjusting himself to the disability.

Mr. Parker, Executive Director of the Canadian Hearing Society, also attended to assist the Commission in this matter. He was acquainted with Mr. Sam Morton who had made a submission to the Commission in which a complaint was made that the 30 per cent disability allowance for his complete loss of hearing and 10 per cent for loss of balance, smell and taste was inadequate. Mr. Parker supported this submission as he was of the opinion that the allowance made in many cases of deafness should be substantially more. He said that severe

bilateral deafness as a result of accident with side effects of vertigo, dizziness, loss of smell, head noises and similar complaints, was a far more serious disability than that suffered in the ordinary case of occupational deafness and was extremely damaging to the individual not only socially but in his effort to gain employment and maintain it.

As a result of what has been said at the hearings I would recommend that the Board should exert greater efforts to investigate the matter of sound levels at work or to lend the assistance of its research to a greater extent than in the past to the government authorities who must regulate it. On the matter of compensation I do not feel there can be any departure from the scheme of the Act that compensation be payable only when there is loss of earnings and, as a consequence, so long as a man is able to continue to work no compensation can be paid. It also appears to be the opinion in all other jurisdictions, judging by their legislation, that 30 per cent is the maximum amount which should be awarded for deafness of the industrial type uncomplicated by troubles such as vertigo or headaches. *I am of the opinion, however, that the additional allowances for vertigo and headaches or other complications in cases of bilateral deafness are inadequate and I recommend that provision be made for an increase in these allowances.*

Coming finally to the matter of including this disability in Schedule 3 it is to be noted that in the Province of British Columbia, following the report of Mr. Justice Tysoe, provision is now made in the Schedule for industrial deafness as well as traumatic deafness. Were I to make any recommendations or changes in Schedule 3 it would be that a change should be made in this instance and that industrial deafness should be included. For the reasons previously stated, however, I do not make this recommendation. The Board already considers industrial deafness an industrial disease and according to the evidence treats it in the same manner as if the presumption applied. This method of dealing with these situations, in my opinion, is adequate.

HEART AND LUNG DISABILITIES IN FIRE FIGHTERS AND OTHERS

The Provincial Federation of Ontario Professional Fire Fighters submitted that there is a serious occupational hazard peculiar to professional fire fighters in the performance of their duties and that this results in an increasing number of cases of injury or death from arterial hypertension, heart or respiratory diseases. Reference was made to an article by Dr. Nathaniel E. Reich, 1953, which contained these conclusions:

"(1) hypertension coronary thrombosis—the anginal syndrome and manifestations of accelerated atheromatous changes are especially prone to occur in firemen and related dangerous occupations because of certain mental and physical factors associated with these occupations;

(2) adequate experimental and clinical evidence has been accumulated to show that the stresses and strains of fire-fighting, environmental extremes, trauma and shock, burns, gases and smoke may act as predisposing factors in the causation of several cardiac disorders;

(3) aggravation of pre-existing heart disease may also occur in the presence of the above factors."

It is felt by the union that, if a specific provision is placed in the Act covering fire-fighters, it will be less difficult to establish in individual cases that the fire-fighter suffered from arterial hypertension, heart or respiratory disease arising out of and in the course of his employment. Legislation covering fire fighters exists in some of the states of the United States and more recently, in September 1966, in Manitoba, regulations in the following form were made:

"Manitoba Workmen's Compensation Board Regulation 1/66 being Manitoba Regulation 98/66 made under The Workmen's Compensation Act R.S.M. 1954 c. 297 respecting Full-time Municipal Fire-Fighters

01.00 In this regulation 'fire-fighter' means a full-time member of a professional municipal fire-fighting department.

02.00 Where a fire-fighter suffers a heart attack diagnosed as such by a duly qualified medical practitioner

(1) after he has entered upon, and while he is still engaged in the actual answering of a fire-call and the fighting of a fire; or

(2) while he is actually engaged upon prescribed training phases of his work involving substantial physical, mental or nervous tension or strain; and

(a) the fire-fighter during the two years immediately preceding any occurrence upon which a claim is based, has been in continuous service as a member of the department;

(b) at or after the time of entering such service the fire-fighter has undergone a physical examination including an examination of the circulatory system (if such an examination is required by the employing department), following which examination he was duly approved for service as a fire-fighter;

unless the contrary is proved, the injury shall be deemed to have been suffered in the line of duty and to have arisen out of and in the course of his employment.

03.00 A fire-fighter who has had a heart attack, whether compensable or not, but who has thereafter been medically certified to be fit for service as a fire-fighter, is entitled to the benefits of Section 2 hereof.

04.00 A fire-fighter who becomes disabled by reason of lung injury is, unless the contrary is proved, deemed to have incurred that disability in the course of, and arising out of his employment, if the type of lung injury by which he is disabled is generally accepted in medical opinion as resulting from the inhalation of smoke or gases, or fumes, or any two or more of these causes.

05.00 Where disability due to inhalation of carbon monoxide is claimed Section 4 applies only where a medical ruling of inhalation of and disability by reason of the inhalation of carbon monoxide is made within forty-eight hours of the exposure claimed as the cause of disability."

The union representative at the hearing referred the Commission to the report of Mr. Justice Turgeon inquiring into the Workmen's Compensation Act in Manitoba where he cited the case of *Town of Cicero v. Industrial Commission*, 89 N.E. 2d. 354. In that case a fire department lieutenant who had suffered from chronic heart disease for at least five years prior to his death had rushed to a fire by truck, had run into the building and had begun to direct his men in the extinguishment of the fire when suddenly he fell to the floor and was taken to the hospital where he was pronounced dead. In that case, though the fire fighter was suffering from chronic myocarditis predisposing him to collapse, the Court held that death had resulted from his activities at work and recovery was allowed.

The Federation admits that in the claims which have been rejected here there has usually been no work incident; the fire fighters died not as a result of fighting particular fires but by reason of heart or lung disease which the Federation says should be related and can be related to this occupation.

The submissions of the fire fighters received support from both the United Steelworkers and the United Electrical Workers' unions. The latter union extended its submission to ask for greater flexibility by the Board in its adjudication of all heart disease claims. The example was cited of a union member whose arm had been badly mangled and who was confined to hospital for a prolonged period when a number of surgical operations were performed. He was later discharged but while still convalescing at his home suffered a heart seizure from which he died. Death benefits were denied the widow. The submission made was that her claim for benefits should have been accepted on the assumption that the injuries were a direct aggravation of the heart condition and the workman's death could be attributed to this fact.

The Director of Medical Services of the Board testified that it is accepted medical doctrine that coronary episodes do not occur without pre-existing pathology. The majority of the claims submitted to the Board are concerned with the problem of coronary thrombosis and its relation to certain aggravating conditions arising out of and in the course of employment such as physical exertion, lack of oxygen, smoke inhalation and various noxious gases and fumes which may affect circulation to the heart muscles. He said that most heart pathologists agree that work or physical exercise cannot damage a normal healthy heart but the problem arises because it is difficult to know when one is dealing with a normal heart. It is known that atherosclerosis involving the coronary arteries is very common in Canada particularly in males over the age of 30 and, while the exact cause of this condition is not known, most cardiologists feel that high fat diet, obesity, lack of exercise, tobacco, hypertension, diabetes and genetic factors are significant. In cases involving direct trauma or electrical injuries involving the heart, the causal agent is usually obvious and entitlement follows. Claims are not accepted where a heart condition is due to general overwork, physical exhaustion, emotional strain, prolonged nervous tension or long hours at work unless there is a work incident or other direct causal relationship. Heart claims in all cases are considered carefully by the Board and judged on individual merit. In difficult cases opinions are always requested

from leading cardiologists. Where permanent impairment of cardiac function results the patient is given the full amount of the total clinical rating as an award for compensation and a portion, usually 50 per cent is charged to the Second Injury Fund. Dr. Mastromatteo, who conducted a study of fire fighters in the City of Toronto covering the period 1951 to 1953 and compared their death rates with men of similar age groups during the same period, stated that the study had showed cardiovascular mortality to be greater among fire fighters than that among average males. He pointed out, however, that lung deaths are decreasing in number so that there is no basis for alleging an increased risk of mortality through inhaling smoke over long periods of fire fighting. He also suggested that the increase in heart mortality among fire fighters is explained by many factors, one of them being the basis of physical selection of such men. Fire fighters are, generally speaking, sturdy, muscular individuals who must meet certain physical requirements and it is known that persons of this type have a higher incidence of heart disease. As a consequence, in part at least, the disease may be attributable to the selection of certain physical types rather than to the conditions of the occupation.

I would be prepared to make a recommendation that a regulation be passed similar to that contained in 02.00 (1) of the Manitoba Regulations but, as no difficulty is experienced at the present time in the manner in which the Board deals with heart attacks suffered in the course of fighting a fire, such a regulation hardly seems necessary. So far as the balance of the submission goes I approve of the manner in which the Board handles heart cases at the present time. So long as they receive careful consideration and are judged on their merits with the benefit of the doubt being accorded the claimant no more can be demanded in a workman's compensation case. The same considerations must apply to the type of case cited by the United Electrical Workers. The Board does consider aggravation resulting in heart seizures and allows compensation for them in many instances. The case mentioned by the union was decided on its particular facts in which the causal relationship was very far from clear. I am not prepared to make any recommendation upon the submission that was made.

MEDICAL CONDITIONS ARISING FROM DUST EXPOSURE

General

Submissions under this heading were many. They came from individuals, from municipalities and from the unions that spoke for those engaged in the mining industry. They had reference to silicosis, emphysema, tuberculosis, cancer and other diseases, all of which were said to be occupational hazards of those employed in mines. The general complaint was that the Board's policy in recognizing disabilities as compensable is too restrictive and that there should be a widening of the classes in Schedule 3. Various medical ills will be discussed in detail hereafter but the general nature of the submissions may be seen in the representations made by Mr. Murdo Martin, M.P. who has been associated with mines and miners for a great many years. He claims that the definition of industrial disease as it pertains to gold miners is too restrictive, only silicosis and pneumoconiosis being recognized as compensable. While in recent years, by reason of better ventilation and aluminum dust therapy, there has been a

marked decline in the number of compensation claims established for these diseases, he points out that this has not been accompanied by a similar decline in the number of gold miners who have become partially or totally disabled as a result of chest ailments. The feeling is widespread in his constituency in Northern Ontario that the diseases suffered by many miners which are now being diagnosed as emphysema, bronchitis, asthma or carcinoma of the lungs are caused by or have a definite relationship to the damage done to the pulmonary tract by exposure to dust. The methods of detecting silicosis are not adequate, he believes, to cope with the problem and failing any improvement in medical methods of detection the onus should be on the Workmen's Compensation Board to relax the strict approach it takes and grant a greater degree of benefit of doubt for the workman. Lungs which are impaired or damaged from inhalation of dust, he says, place a great stress on the heart and other vital organs and there is a strong probability that these overtaxed organs fail long before their normal time. He suggests the desirability of having studies made in this field and, in the meantime, that greater consideration should be given in cases where silicosis pensioners die from some ailment other than the compensable one; and if it is reasonable to conclude that the fatal ailment could have been caused or hastened by the compensable silicotic disease, the family of the deceased pensioner should continue to be covered.

Mr. Martin was unable to appear at the hearings but furnished the Commission with a lengthy brief in support of his submissions.

Two primary matters for discussion are thus the efficiency of dust control measures and the question whether or not certain ailments not now recognized for compensation are attributable to dust conditions in the mines. I shall discuss that of dust control under my remarks on silicosis.

On the medical matters under review I have had the benefit of the opinions of various medical experts who appeared before the Commission. Because I shall make reference to them on a number of occasions I shall list them and their qualifications here.

Dr. R. B. Sutherland is Director of the Environmental Health Branch of the Department of Health. He is certified as a specialist in occupational medicine by the American Board of Preventive Medicine, and is a Fellow of the American College of Preventive Medicine, and an associate professor of the School of Hygiene of the University of Toronto.

Dr. Ernest Mastromatteo is Chief of the Occupational Health Service of the Environmental Health Branch of the Ontario Department of Health. He has numerous qualifications for this position and has been with the Department for a number of years

Dr. J. F. Patterson. At the time of the hearing he was the chief of the Department of Medicine at Sunnybrook Hospital. He, too, has many qualifications for the post.

Dr. L. Brennan, Chief, Chest Services Department for the Workmen's Compensation Board.

Dr. T. Kavanagh, Chief Pension Medical Officer for the Workmen's Compensation Board.

I shall have occasion as I proceed, to deal with submissions as they refer to specific illnesses. The only submission that I would mention at the moment is one of a general nature advanced by the Ontario Municipal Association upon a request from the Town of Timmins. It asked that an impartial board of doctors, specialists in the field of respiratory disease, be set up to study the full effects of the inhalation of silica dust on the human body and that the results of this study should be made public so as to "form the basis for any necessary changes in the Workmen's Compensation Act." The only previous study resembling that sought was one conducted by Dr. Patterson in 1959. It was a study of silicosis and recommendations were made by him at that time which to a large extent have since been acted upon. That study did not extend to a review of other chest conditions of miners and the possible relation of such conditions to the work environment. It is a review of the latter kind which is now sought. Subsequent evidence will show that the medical authorities advising the Board base their decisions, when disallowing certain claims, upon the fact that no credible evidence is presented to link the conditions on which these claims are based with work environment in mines. In view of the opinion current among miners that a number of non-compensable illnesses do arise from work in the mines a research project of the type suggested would be of assistance. I recommend that it be placed high on the list of future research projects.

Silicosis

Two classes which appear in Schedule 3 are pneumoconiosis and silicosis. Pneumoconiosis is usually defined as a condition or disease of the lungs caused by the inhalation of mineral or metallic dusts. Included in the term is silicosis itself. The majority of dusts are inert in that they produce no acute inflammatory response or chronic fibrosis of the lungs. The more disabling forms of pneumoconiosis are caused by the inhalation of dusts such as silica or asbestos which provoke fibrotic responses in the lungs. Silica is the main constituent of sand and is present in significant amounts in the native rock of the gold and uranium mining areas in this province. When inhaled over a sufficient period of time free silica may produce the disease known as silicosis, a condition characterized by multiple small fibrotic nodules scattered throughout the lungs. It may manifest itself during the time of a miner's employment or not for some years after he has ceased to work in the mine. It is not necessarily debilitating and some men work for many years in the mine after the condition has become apparent. It renders the lung, however, less resistant to tuberculosis and since the latter disease is caused by infection it is imperative that a workman suffering from simple silicosis should not be subjected to the danger of such infection. Not only is the silicotic susceptible to tuberculosis but a tubercular workman is susceptible to silicosis. Therefore, a person who has tuberculosis or has had it but been cured, is not permitted to work in a mine or be exposed to the inhalation of silica dust.

Silicosis is defined in section 1 (1) (s):

" 'Silicosis' means a fibrotic condition of the lungs sufficient to produce a lessened capacity for work, caused by the inhalation of silica dust:"

and by section 116 (12):

> "The provisions of this section relating to silicosis apply mutatis mutandis to pneumoconiosis and stone worker's or grinder's phthisis."

Silicosis is disease number 12 listed in Schedule 3 and the processes set opposite in column 2 are those of mining or quarrying, cutting, crushing, grinding or polishing stone or grinding or polishing metal.

In order to qualify for benefits, a workman suffering from silicosis must have been exposed to silica dust in his employment in Ontario for periods amounting in all to two years preceding his disablement and must have been a resident of Ontario for at least three years next preceding his disablement, except where the Board is satisfied that the silicosis was not caused by anything other than his work in Ontario.

Section 167 (2) of The Mining Act provides:

> "No person shall be employed in a dust exposure occupation unless he is the holder of a certificate in good standing."

By the same Act the Board is required to maintain chest examining stations and these have been established in Sudbury, Timmins, Kirkland Lake, Fort William and Elliot Lake and portable units travel to mines in other areas.

A person seeking employment in a dust exposure occupation must secure a certificate from a doctor at one of these stations, which certificate will be given only if the doctor finds him to be free from disease of the respiratory organs and otherwise fit for employment in a dust exposure occupation. At the end of a year he must appear for a further examination when the certificate will be extended upon the same terms. At the end of two years he must again appear for examination and if free from tuberculosis of the respiratory organs he will then be given a miner's certificate. Following that he must present himself yearly for re-examination when renewal of the certificate will be made if he remains free from tuberculosis of the respiratory organs. The cost of this examining service is assessed to the mining industry.

Claimants whose medical examinations show evidence of dust effects are referred to the Silicosis Referee Board which is composed of three independent specialists and a consultant. A further examination is then held when the x-ray and other diagnostic data are considered and the report containing findings and opinions regarding the diagnosis and degree of disability is issued. If a diagnosis of silicosis has been made the workman invariably becomes entitled to medical aid and to compensation which is allowed at the rate of disability established by the Referee Board. The workman with silicosis may continue at work so long as he continues to hold a miner's certificate. He may be barred from a dust exposure occupation only if he has tuberculosis. Compensation becomes payable only where the workman leaves the industry or has a loss of earnings. If he continues to be employed, notwithstanding his silicosis, and has no loss of earnings, he receives no compensation. Awards for silicosis are levied by the Board against the mining industry and other industries where silicosis occurs.

In addition to medical aid and compensation, silicotic workmen may require and will obtain social and vocational counselling and selective placement in other employment when a major change in occupation is indicated and may also receive vocational retraining. When silicosis first appears in the x-ray the workman is called in for consultation and advised that he may file a claim if he suffers loss of earnings. He is told that he need not leave his employment in the dust exposure environment. However, with certain individuals, especially younger men, where silicosis has advanced rapidly the rehabilitation staff will endeavour to interest the workman in seeking other employment and will assist in rehabilitating him if he cannot successfully do so himself.

An extensive brief was filed by the Ontario Mining Association and was spoken to by Mr. Perry, who is executive director of the Association as well as of the Mines Accident Prevention Association. It states that the major objective of the industry is to eliminate the causes of silicosis. The techniques and practices which have been developed for this purpose include initial radiological examination to screen out physically susceptible applicants, development of rock drills and machines to minimize the creation of dust, the liberal use of water and water sprays to suppress dust, the provision of ample mechanical means of ventilation for dust removal and the use of aluminum prophylaxis. Statistics filed by the Association indicate an abrupt change in the incidence of silicosis starting in 1930 coincidentally with the introduction of radiological examination of the chest pursuant to The Mining Act.

Although some new cases are being discovered each year in almost all age groups, it was stated that the majority of cases now occur in those groups whose initial exposure to dust predates 1929 when compulsory certification was instituted. The following table was submitted:

ONTARIO SILICOSIS CASES RECOGNIZED FROM 1926 TO 1965

Period of first exposure to dust	Average number of persons employed in dust exposure occupations	Number of cases of silicosis	Cases per 1,000 men employed during period
Before 1900		57	
1900—1904	1,900	64	33.68
1905—1909	2,500	184	73.60
1910—1914	6,700	338	50.45
1915—1919	6,800	267	39.26
1920—1924	5,000	315	63.00
1925—1929	6,600	196	29.70
1930—1934	7,600	47	6.18
1935—1939	13,600	18	1.32
1940—1944	15,200	4	0.26
1945—1949	11,800	5	0.42
1950—1954	16,700	3	0.18
1955—1959	18,000	3	0.17
Total		1,501	

A graph also was submitted by the association showing the ages of death of silicotic miners as well as of all Ontario males over 30 years of age. It indicated

that the disability from silicosis is no longer shortening normal life expectancy. In the period 1926 to 1929 the average age at death of all Ontario males over 30 was 65.8 and of silicotic miners 43.3. By 1965 the average age at death of all Ontario males over 30 was 68.45 and of silicotic miners 68.8.

The Association also filed Table 26 showing the principal causes of death in silicosis cases from 1926 to 1964. This table appears on page 139 of this report. It will be noted that tuberculosis as a cause of death has decreased from nearly 80 per cent in the period 1926 to 1929 to less than 10 per cent in the period 1960-64 and other causes of death have correspondingly increased. The heavy line across the chart dividing tuberculosis, pneumonia and right heart disease from other heart diseases, cancer, cerebral hemmorhage and other causes, serves to separate death cases attributed to silicosis where the silicosis claim was allowed and death cases attributable to some other cause where the silicosis claim was disallowed.

Mr. Perry, Mr. R. L. Smith, Chief Engineer of Mines for Ontario, and Mr. Yourt of the Rio Algom Mines testified regarding the regulation of ventilation and dust control in the mines. It was admitted that there was no regulation or standard as to the acceptable quantity of fresh air for ventilation and that the Department of Mines does not regulate the quantity of air that is forced in. Periodical investigations are made, however, to assure that conditions are satisfactory. Representatives of the Mines Accident Prevention Association travel regularly to the mines to inspect dust conditions. They make recommendations if it is thought that there should be changes or improvements. Inspectors under The Mining Act also investigate regularly and a semi-annual survey is conducted, the results of which are reported to the Chief Inspector of Mines for the Province. Ontario is the only jurisdiction on the continent where such surveys are conducted on a routine basis.

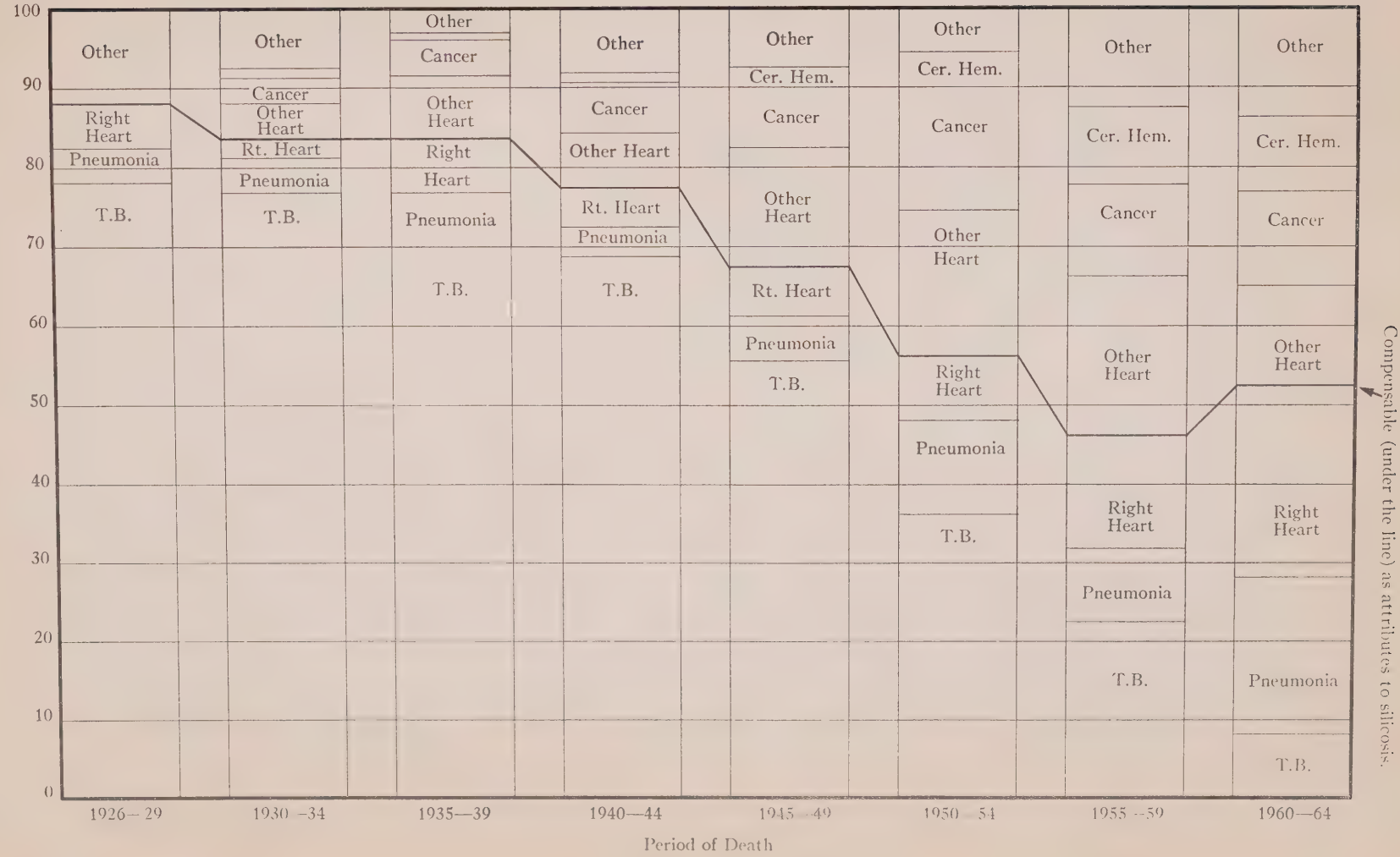
Dust counts are not required to be made daily or at each place in the mine although in larger mines a full-time staff of dust control officers operate at all times. Counts are really spot checks taken at a series of working places in the mines. There is no standardized practice as to how, when or where to take the samples. The government does not set any tolerable dust level although in the past it has used a standard of 500 particles per cubic centimetre as set by the International Conference of Industrial Hygienists. In practice the Mines Accident Prevention Association sets a much higher standard of 300 particles per cubic centimetre and seeks constantly to reduce this level.

Another measure used to minimize the danger of silicosis is the inhalation of an aluminum powder by those working in dust exposure situations. To what extent this has contributed to the decreasing incidence of silicosis has not been definitely established. It is thought, however, to have a beneficial effect and is in general use.

As will be seen from the above, the incidence of silicosis among hard rock miners has been greatly reduced and few submissions with regard to it have been made. Most of these have reference to conditions which are believed to arise from the same environment. One submission made by Mr. Martin is that in all death

TABLE 26

PRINCIPAL CAUSES OF DEATHS OF SILICOSIS CASES = 1926 to 1964



claims where silicosis has not been diagnosed but is suspected there should be a post mortem examination. He stated that unless this is done the dependants of the deceased workman will not be compensated even though the absence of silicosis diagnosis might be wrong. It is apparently a disease which is not readily diagnosed and physicians are not equally qualified to make the diagnosis. A somewhat similar submission but for a different purpose is made by the Ontario Mining Association which submits that any death claim attributed to silicosis should be confirmed pathologically by a post mortem examination. I am of the opinion that both of these submissions have merit and that post mortem examinations should be held in such circumstances. No question of compulsion, however, should arise because of religious and other objections. I can only recommend that the Board give effect to these requests where possible.

The Ontario Municipal Association made a submission coming from the Township of Teck that the Act should be amended to ensure "recognition of 'silicosis' accident where tuberculosis and other constitutional disability may have developed before or after employee has been brought from exposure on advice or orders of Workmen's Compensation examiners . . ." It asked also that payment of compensation under the Act be mandatory in every case of industrial accident where the employee is disqualified after 10 years' service in a mine. I cannot make the recommendation asked for. Tuberculosis is now compensable when associated with silicosis. Further evidence will indicate that in other cases it is a hazard suffered by the population in general and up to the present time it has not been demonstrated to be due to dust exposure. It can develop in an employee after 10 years' service just as it can to a person not employed in a mine at all and until some more convincing evidence is available to indicate that it can be due to dust exposure, I am unable to make a recommendation of the kind desired.

A further submission was made by the Ontario Municipal Association that the Act should be amended to provide for payment of pensions to widows and dependent families of workmen who have been recognized as silicotics and were receiving compensation immediately prior to death without regard to the cause of death; and that payment should be at the rates of the compensation the workmen were receiving together with such other pension awards as might be warranted, having regard to the immediate effect of the silicotic conditions as being either the cause or contributing factor in the death. Once again I am unable to accede to this suggestion. Table 26 filed by the Ontario Mining Association shown on page 139 of this report indicates that, in many instances, the causes of death of those suffering from silicosis have been those suffered by the population in general and medical evidence, to be mentioned later, indicates that, in these cases, there is nothing to establish that the silicosis in any way contributed to the deaths in question. I must accept this evidence and I make no recommendation.

The Mine, Mill and Smelters' union in its submission endorsed the recommendations of the Committee on Silicosis appointed by the Associated Compensation Boards of Canada made in the Committee's 1961 report and asked that enabling legislation be passed for the purpose. The report made eight recommendations which I need not enumerate as all but two have been adopted and

are in force in this province. The two in question are (1) that all present limiting clauses as to residence be abolished and (2) that authority under the respective Acts be given to each board to make arrangements with other boards with respect to claims where there has been exposure in more than one province.

I was informed that all provinces other than Manitoba, Ontario and Quebec had passed enabling legislation to permit such reciprocal agreements but that no agreements can be made till all provinces participate. The union seeks this legislation, and action upon it, by reason of the provisions in section 116 requiring, before compensation is payable, exposure for periods amounting to two years to silica dust and three years' residence in the province immediately preceding the first disablement. Union representatives stated that many miners move from one province to another and though a workman may have laboured many years in a mine he will not be compensated in Ontario if he cannot comply with the above requirements. Till such time as reciprocal agreements can be made this three year residence requirement would seem to be justified. I would not recommend any change at this time.

The request for enabling legislation presents a different picture. The recommendation which comes from the Associated Compensation Boards is deserving of consideration and the Board should be placed in a position to enter into the agreements named when it becomes possible to do so. *I would recommend that legislation be enacted to authorize the Board to make agreements with other provincial workmen's compensation boards in Canada with respect to claims where there has been exposure to silica dust in more than one province.*

The Union of Mine, Mill and Smelter Workers in its brief asked for a recommendation that provision be made by the Department of Mines or the Department of Health for periodic dust counts and more adequate control measures, both to be administered by the Department. It is beyond my jurisdiction to make any recommendation in this matter. I gained the impression, however, from the evidence to which I have referred, that every effort within reason was being exerted by the Mines Accident Prevention Association, the Department of Mines and the operators themselves to do all that is possible in this regard. Any representations in the matter should be made to the government.

One other matter remains to be dealt with, namely, the effect to be given to decisions of the Silicosis Referee Board. This Board of three members who are experts in their field is appointed by the Workmen's Compensation Board in consultation with the Department of Health. A silicosis claimant who can show that he has had two years of silica exposure in Ontario and has not subsequently sustained two years of silica exposure elsewhere is referred to the Silicosis Referee Board for examination prior to consideration of his claim. This Board is asked to give its opinion as to whether or not silicosis is present and to assess the degree of disability. This examination by impartial referees who have been selected as experts in the field is made before the initial decision is given on a claim and is the reverse of the procedure followed with other industrial injuries. Once seen by the Referee Board the individual case is customarily followed at intervals ranging from six months to two or three years so that further developments such as increase in disability can be assessed. Dr. Sutherland submitted as did the

representative of the Ontario Mining Association that the medical opinions of the Referee Board should not be subject to review and reversal by decisions of the appeal bodies within the Workmen's Compensation Board and that if new medical evidence is submitted at an appeal hearing, the case should be sent back to the Referee Board for reconsideration.

This opinion expressed on behalf of the Referee Board composed of specialists is understandable. I feel, however, by reason of the evidence given on behalf of the Workmen's Compensation Board that the practice of the latter Board is to accept in all cases, or in practically all cases, the recommendations of the Referee Board and where new evidence is adduced, to refer it to that Board for reconsideration, that this matter is not of great moment. Dr. Brennan for the Workmen's Compensation Board stated that in 25 years he had known of only two cases where any contrary procedure had occurred. It is obvious, in any case, that the appeal procedure as it exists within the Board is open to all claimants and the right of any claimant to appeal a decision on his claim cannot be interfered with. I can make no recommendation of the kind requested.

Emphysema and Bronchitis

As I have already indicated the opinion exists in mining areas that those who suffer from either of the above ailments do so by reason of their occupation as miners or by reason of their former employment in that industry. This was the tenor of the submissions made and upon it was based a suggestion by union representatives that an amendment be made to Schedule 3 to bring these diseases within the schedule for all who are employed in mining occupations. It was recognized that compensation is allowed for emphysema when associated with silicosis but what is sought is a widening of this restricted field to other types of emphysema and to bronchitis.

Dr. Sutherland who claimed a wide experience as a member of the Silicosis Review Board in examining the miners throughout the north country and in Toronto hospitals gave the Commission the benefit of his opinion regarding the submissions. He stated that chronic bronchitis is not a true disease but rather a clinical disorder characterized by excessive mucous secretion in the bronchial tree accompanied by chronic or recurrent cough. He stated further that the condition is most prevalent among males over thirty-five years of age and that it occurs predominantly but not exclusively in cigarette smokers. There are no characteristic abnormalities seen in the chest x-ray films and any alterations of respiratory function consist primarily of increased resistance to air flow in the wind pipe. Emphysema on the other hand is an anatomic alteration of the lung characterized by an abnormal enlargement of the air spaces. This over-distention causes destruction of the walls of the small air sacs at the end of the bronchial tree. The tissue changes vary in their distribution and extent and emphysema may be of four types. They are those in (a) areas of the lung adjacent to fibrotic lesions caused by silicosis, (b) the lobular type—a form not associated with fibrotic lesions, (c) the focal type which is found among coal workers, and (d) the generalized vesicular type involving the lungs as a whole rather than the lobules individually. Clinically some persons with emphysema have no symptoms or abnormal physical signs and the chest film may be normal even though the

disease is found on pathological examination of the lungs. Where the disease is more marked patients will usually complain of shortness of breath on exertion. Emphysema usually occurs in men over forty years of age who have a long history of chronic bronchitis and cigarette smoking. In advanced cases the disease is totally disabling.

In Great Britain for many decades chronic bronchitis has been a major cause of incapacity for work and the disease has been the subject of many studies. In the United States and Canada mortality data are available only for the years since 1950 and in both countries the crude death rate from emphysema, with or without the mention of chronic bronchitis, has risen faster during the last 15 years than from other causes of death, including lung cancer. In the United States studies have shown that the death rate by reason of emphysema, for white males, rose more than six times from 1949 to 1959 and recent studies by Dr. A. H. Sellers of Ontario mortality during the years 1961 to 1963 show that the greatest increase in emphysema has occurred in men over the age of 55 years. Among men aged 55 to 64 the death rate tripled. Among those aged 65 to 74 the increase was nearly fourfold and in men aged 75 and over the increase was more than eight times. With an increasing incidence of emphysema in the older male age groups generally, more and more workers in dusty trades will also develop the condition. The question to be considered is whether any greater increase is being, or will be, experienced by miners than is experienced by workers elsewhere who are not subject to dust exposure. With reference to the lobular and generalized vesicular forms of the disease about which the submissions have been made, the general consensus of reports to date is that cigarette smoking is a major factor in the development of these forms and that air pollution plays a part also though a lesser one. Focal emphysema which is recognized as resulting from the inhalation of coal dust is not one of the types which need be considered here.

Advanced cases of simple silicosis may occur without any evidence of emphysema. However, emphysema can occur around silicotic nodules and in cases of silicosis where large fibrous masses have formed, localized areas of the first-mentioned form of emphysema frequently develop. The scarring caused by the fibrous mass distorts the surrounding tissue and makes it subject to development of emphysema. In all such cases emphysema is recognized as an integral part of the silicotic process and, in so far as it increases the patient's disability, it is recognized by the Board as a compensable condition.

Dr. Sutherland went on to state that the effect of dust exposure as it relates to emphysema has been and is under continuous study in this country and elsewhere but as yet there has been no valid evidence to indicate that the common forms of emphysema, namely, the lobular and generalized vesicular types, occur with any greater than normal frequency in men exposed to silica.

Dr. Patterson, whose report on silicosis in 1959 has been referred to, expressed opinions similar in content to those of Dr. Sutherland. He said that bronchitis and emphysema are quite common conditions to be found in men as they grow older and are closely related in many cases to the amount of cigarette smoke inhaled by the sufferer. He was of the opinion that no one could say, with the

information available, that bronchitis or emphysema are more common in miners than in non-miners. He was acquainted with no studies of the matter and felt that the reason for the lack of evidence regarding any particular relationship between dust exposure and the diseases mentioned may be that no extensive study had been made.

Representatives of the Mine, Mill and Smelters' Union based their submissions upon certain papers relating to experiments carried out by Dr. G. W. H. Schepers. Dr. Schepers is a specialist in occupational diseases generally though not particularly in the pneumoconiosis field. An effort was made by this Commission to secure his attendance at the hearings but he had left his previous post at an eastern university and gone, it was later learned, to California. His exact location there was uncertain though it could no doubt have been ascertained in time. In view of the difficulty experienced in locating him a decision was made at that time to look instead for some other authority and the name of Dr. Patterson having been recommended, he was called. The extract from the Schepers paper upon which the union placed most emphasis was to the effect that evidence was furnished by laboratory experimentation which supported the theory that most emphysematous states in workers in dusty occupations are of pneumoconiotic origin. These experiments on the effect of arc welding, hematite dust, bituminous coal dust, oil smoke, chart dust, beryllium and rare earth fluoride dust had disclosed that dust-caused emphysema, whether hypertrophic or focal or both, may precede the focal accumulation of inhaled particulate matter. Upon this ground the argument was advanced that evidence of focal accumulation should not be required to establish emphysema as a dust exposure disability.

Dr. Sutherland's comment on this was that Dr. Schepers is known as a very good scientist, experimentally, that his paper had been prepared for a medical audience and that the extract in question should be read with his paper as a whole. Dr. Sutherland who was acquainted with the paper in question, pointed out that the experiments referred to had been done on rats and guinea pigs by injection down the windpipes and not by inhalation. Quite large doses which could have the effect of swamping the lungs were used and these could cause a considerable reaction. He considered it a useful type of experiment as a guide to something further by way of inhalation but that it was of limited value otherwise. The type of emphysema developed was not of the type, the nodular type, of which he had been speaking and as a consequence the conclusions reached in the experiments were not of great assistance.

The submissions heard made it apparent that a great deal of thought and study had been given them. This was particularly so in the case of Mine, Mill and Smelter Workers' Union representatives. The effect of these representations together with other evidence is sufficient, in my opinion, to justify a research project of some magnitude covering the relationship between dust exposure and the diseases which have been discussed. Dr. Mastromatteo stated that he would place it among the first of desirable research projects. On the other hand as all the expert testimony was to the effect that experience has not shewn, though substantial enquiry has been made, any evidence that bronchitis and emphysema

(other than where associated with silicosis) are any more common among miners than among others, I can make no recommendation that these diseases should be included as part of Schedule 3.

My only recommendation is that increased research into the effect of dust exposure on miners be pursued by the Board.

Tuberculosis

Tuberculosis in miners, unless associated with silicosis, is not compensable. If associated with silicosis, as already stated, an allowance of compensation is almost automatic. The submission is made that when a miner develops tuberculosis where no evidence of silicosis exists, he also should be compensated. The reasoning advanced is that as it had been established when he was granted his miner's certificate and upon subsequent yearly medical examinations that he had no tubercular chest symptoms, the presumption should be, when he later develops tuberculosis, that it is due to dust exposure.

The problem is not so pressing as it was at one time. Prior to 1950 tuberculosis accounted for 60 to 70 per cent of the deaths among silicotics and at that time pneumonia and right heart failure, both of which are considered complications of silicosis, were responsible for a further ten to fifteen per cent of deaths of silicotics. With the advent of chemotherapy for tuberculosis, this picture has changed radically. The rigid medical examination prior to entering employment has also made its contribution. During the period from 1960 to 1964 tuberculosis was responsible for only about eight per cent of the deaths in silicotics with pneumonia accounting for approximately 20 per cent and right heart failure for about 24 per cent. Nearly 48 per cent of silicotics now die of conditions which medical experts testifying before this Commission believe are unrelated to silicosis, such as coronary artery disease, cancer, cerebral hemorrhage and accidents. This changing mortality picture has undoubtedly resulted in the rejection of a relatively higher proportion of claims for death and pension benefits to widows and dependants in mining communities and has generated a feeling of dissatisfaction over the settlement of specific claims. Acceptance of any claim, however, must be based on medical evidence or expert opinion which serves to relate the cause of death to the occupational disease from which the worker suffered and if there is no such evidence the allowance of such a claim would constitute a misuse of compensation funds for purely social or welfare purposes. In the present instance Dr. Sutherland and Dr. Patterson, both of whom have wide opportunities to examine and treat those who have developed either tuberculosis or silicosis, are firm in their statements that no higher incidence of tuberculosis is evident in miners who do not have silicosis than in the corresponding population. Tuberculosis is a contagious disease. One may show clear x-ray plates today but wholly different plates in several years time. This happens with members of the general public as well as with miners. Under these circumstances, the annual medical examination which the miner has had year by year prior to developing tuberculosis has little significance. Lacking any medical evidence whatever that tuberculosis can be attributed to dust exposure, I make no recommendation.

Lung Cancer

The submissions made on this subject were few in number. The evidence of Dr. Sutherland was that lung cancer appears to account for some six per cent of deaths in Ontario males over the age of 60 regardless of occupation. Since 1961 there have been 355 deaths of silicotics from all causes in Ontario of which 21 were due to lung cancer. The Department of Health has computed the number of lung cancers which would normally have been expected among these 355 silicotics if they had sustained the same proportion of lung cancer deaths in each group as occurred in Ontario males. The expected number was estimated at 16 as compared with the 21 cases which occurred. While this represents an increase of some 30 per cent over the number normally expected, it was Dr. Sutherland's opinion that the increase was not statistically significant. He had taken part in five different studies, however, where a very high incidence of cancer was found to exist in specific occupations but mining was not one of such occupations. Studies conducted in other countries had disclosed no relationship between exposure to silica dust and the development of cancer. He referred in particular to South Africa where there had been a longer experience of silicosis than in Ontario and where no increase in the incidence of lung cancer in hard rock miners, over that normally expected in the general population, was found.

On the experimental side Dr. Sutherland said that no cases of lung cancer had been reported on the thousands of animals which had been used over the past forty or fifty years in connection with studies of silicosis. His considered opinion he said, was that there was no evidence to indicate that exposure to silica dust results in any increased risk of developing cancer. He qualified his statement only by a comment that it should not be taken to imply that the subject was closed for it was under continuing study.

His conclusion was in contrast to the known experience in cases of asbestos fibrosis of the lungs where studies have shown that lung cancer has been responsible for 15 to 23 per cent of all deaths occurring in men with asbestosis. He referred to studies now under way to determine whether the increased risk of lung cancer is associated with all kinds of asbestos or restricted to fibres of a certain type. Lung cancer has been accepted as a compensable condition in the few cases of asbestosis in Ontario in which it has developed.

Dr Patterson, too, stated that there was no evidence of any greater incidence of lung cancer in the silicotic miner than in the general population. He considered smoking to be the chief cause of cancer and also referred to the higher incidence of cancer in other occupations than hard rock mining, such as those referred to by Dr. Sutherland.

Dr. Mastromatteo in his evidence pointed out that the causes of cancer are many and as yet the real cause is not known. Causes may be genetic, geographic, smoking, air pollution and in some cases occupational influences. For this reason he was opposed to listing lung cancer in Schedule 3 as arising out of any particular occupation with the presumption arising from such listing. He expressed the opinion that the Board has, under the Act, authority to deal with individual claims for lung cancer as they arise and that it now has sufficient criteria to

allow it to specify, as it does, certain occupations as presenting work hazards which call for a presumption that cancer of a workman in such employment is work-caused. As already stated, however, he did not advocate that even these cases should be listed in Schedule 3.

So far as workers exposed to silica dust are concerned there has been no evidence before me to indicate a cancer hazard arising from that work situation and I can make no recommendation to recognize such a hazard.

Other Ailments

Submissions were made from various sources that damage to the heart, kidneys and liver also could be attributable to work in dust exposure situations. The Mine, Mill and Smelters' Union again referred to the experiments done by Dr. Schepers which indicated that there might be damage to some of these organs in such situations. The union submitted that there should be a provision in Schedule 3 to take care of such cases. In the case of silicotics damage to the right side of the heart is accepted as compensable by the Board upon the basis that extensive scarring in the lungs, due to silicosis, will place a much heavier burden upon the right side of the heart, the part which pumps the blood through the lungs. The left side of the heart is not subject to similar pressure and consequently other heart or artery conditions are not recognized as compensable nor is injury to the liver or kidneys. Dr. Sutherland testified, referring to coronary artery disease as opposed to right heart failure, that it is one aspect of arteriosclerosis which is a general thickening of the blood vessels throughout the body and that he knew of no statistics or studies to show that silicosis might produce arteriosclerosis. Cases of heart failure are common in the public at large as well as among miners. Many things are known to contribute to this condition but silicosis is not one of them. He felt that the liver might be affected terminally where a patient suffered severe prolonged right heart failure causing the liver to suffer congestion and enlargement but this would be a terminal condition in a silicotic with a severe right heart failure which would be readily recognized as compensable. He knew of no reports at all where kidneys had been shown to be affected by silicosis. He discounted the work by Dr. Schepers whereby an injection of silica into the blood stream had indicated that silicosis might develop in certain organs, including the liver, on the ground that there is no way for inhaled silica dust to go from the lungs to the liver, spleen or heart. Testimony to similar effect was given by Dr. Patterson. I am of the opinion that this medical evidence must be accepted and I make no recommendation.

SCHEDULE 2

By section 5 of the Act employers in Schedule 2 industries are liable individually to pay compensation and medical aid after the amount has been ascertained by the Board under the statute. Schedule 1 employers are required to pay annual assessments into a fund from which are paid medical and compensation costs incurred by their employees collectively. Schedule 2 employers are not required to contribute to the fund but as I have said are required to pay individually the costs of medical aid and compensation for their employees as determined from time to time by the Board.

Schedule 2 generally covers the employees of provincial and municipal agencies, railway and other transportation and communication companies and employees of the Crown in the right of the Province of Ontario. Upon the application of an employer the Board may add to Schedule 2 any industry or part of an industry or any department of the applicant employer not already covered in Schedule 1.

In addition to paying the cost of compensation and medical expenses, the employers in Schedule 2 are required by section 119 of the Act to pay to the Board such proportion of the Board's administrative expenses as the Board, from time to time, may determine. These expenses are allocated by the Board to Schedule 2 employers in the same manner as assessments for contributions to the accident fund are apportioned among Schedule 1 employers. In order to meet the future costs of permanent total or partial disability or fatal accident compensation, the Board may, under section 30 require a Schedule 2 employer to pay to it the amount that it considers necessary to meet these future payments. These moneys, when received by the Board, must be invested and will form a fund available for future payments. Payments under this section at the end of 1966 constituted a fund of some $4,657,346.00 in the hands of the Board. At the Board's election it may require an employer to give security in lieu of paying the moneys over to the Board. The Board is further empowered to require a Schedule 2 employer to deposit money with the Board from time to time, out of which compensation and medical aid may be made available to employees as accidents occur.

A number of other provisions applicable to payments out of the accident fund are made applicable to compensation payable by individual employers under Schedule 2, including lump sum payments where the Board commutes the weekly or other periodical payments payable to a workman.

Schedule 2 has been part of the Act since its inception but, except for the method of payment of compensation and medical aid no distinction has been made between Schedule 1 and Schedule 2 employers.

This history of the origin and continuance of Schedule 2 under The Workmen's Compensation Act was dealt with by Chief Justice Meredith and later by Mr. Justice Roach in their respective reports on the Act.

The concept of collective liability under Schedule I was adopted in order to provide financial security for both the workmen covered by the Act and their employers. Schedule 2 employers do not include those who might be financially ruined by reason of accidents to their employees with the resultant loss of compensation which would follow. Indeed, Chief Justice Meredith in his report stated, "If it had been practical to do so without impairing the efficiency of the collective system, I should have preferred to include a larger number of industries in Schedule II . . . " so that a comparison might have been made between the collective and individual liability systems. Mr. Justice Roach reported, "Thirty-five years experience has demonstrated that the employees in those industries in Schedule 2 are equally as well treated, so far as the operations of the Act are concerned, as the employees of the industries in Schedule I."

The Ontario Federation of Labour and the United Steelworkers of America have advocated in their appearances before me, the abolition of Schedule 2. An examination of the report of Mr. Justice Middleton on The Workmen's Compensation Act in 1932 and that of Mr. Justice Roach mentioned above reveals that similar submissions were made in those earlier times. The position taken by the Ontario Federation of Labour against the continuance of Schedule 2 appears to be based upon a belief that employers under Schedule 2 are inclined to contest compensation cases and disclaim responsibility under the Act for their employees' accidents. This, the Federation states, has caused delays and postponed the enjoyment by the injured workman of his compensation entitlements.

The United Steelworkers of America Union shares in a further argument made by the Ontario Federation of Labour that the establishment of Schedule 1 and Schedule 2 side by side in the first instance was experimental in purpose and that half a century of testing should be considered an adequate try-out, and that the principle of collective responsibility should now be applied to all employers and employees throughout the Province. Again, the Steelworkers expressed the view, although admittedly unable to document it, that claims for compensation by employees under Schedule 2 are much more vigorously contested than claims made by employees under Schedule 1. It was further stated, although there is apparently no evidence to support the statement, that the practice of contesting claims under Schedule 2 has considerably increased the administrative cost over that experienced with respect to Schedule 1 employers, and since the total cost of administration of the Board is pro-rated equally among all employers, that Schedule 1 employers are paying higher administrative costs than would be the case if Schedule 2 were abolished. There were no representations by Schedule 1 employers to support the view put forward by the Steelworkers.

It may be of significance to note that no province, other than Ontario, has seen the necessity or advisability of establishing two categories of employers, except Alberta where Schedule 2 relates only to employees of federal and provincial governments and certain Crown corporations.

The employers principally concerned with this matter were the railroads, seven of whom filed a joint brief. A joint presentation was made to the Commission by six of these. The railways point out that the need to provide security for the workman against the possible insolvency of the employer was the reason

for the adoption of collective liability. Since this does not apply to large employers in the transportation and communications fields and, to any degree, in the field of public employment, there is no compelling need for the extension of the collective liability concept to these industries and employers. Furthermore, the employer in these industries, by individual efficiency, may control his administrative costs, other than those incurred on his behalf by the Board under the Act. There is thus some real advantage to the employer, and therefore to the community, in establishing the efficient arrangements resulting from the Schedule 2 concept. The reasons, according to the railways, for the acquiescence by Sir William Meredith in their request for exclusion from the statutory provisions relating to the accident fund are as valid today as in 1915. Experience since that time which has seen Schedule 2 extended beyond the railways, in their view, bears out this submission. It was further stated that there had been no instances where insolvency problems had occurred in cases involving Schedule 2 employers.

The representatives of the railways appearing before me stated that the railways participate in the appeal procedure only to a limited extent. The representatives of the Board in their appearances before this Commission have stated that they could find no basis in the Board records to support the allegation that Schedule 2 employers promote or participate in appeals to a greater degree than do employers in Schedule 1.

The following were enumerated as advantages afforded the railways by being allowed to operate as they do under Schedule 2:

(1) the railways retain control of their own administration in connection with workmen's compensation claims;

(2) they have, and must have, available for other work a staff for investigating accidents which can economically include in its field work injury investigations;

(3) their operations are extended over a wide area and the railways are in a better position to investigate claims quickly and efficiently;

(4) the employers under Schedule 2 are not required to pay in advance, and as a considerable amount of money is involved under Schedule 2, there is a distinct financial saving to the employers without any detriment to the workmen or the Board.

The submissions by the railway companies with respect to Schedule 2 were supported by the Bell Telephone Company.

In 1950, when discussing this issue, Mr. Justice Roach stated, "If I were convinced that there would be any justifiable advantage to the workman and no disadvantage to the employers in those industries now included in Schedule 2 by transferring these industries to Schedule 1, I would recommend the change. I am not so satisfied."

Upon considering on the one hand the proposals for change and the anticipated advantages if such proposals were implemented, and on the other hand, the submissions by transportation and communications employers in Schedule 2 no strong case can be said to have been made to warrant abolition of the

Schedule 2 operation which appears to function as efficiently as if not more efficiently than does that under the fund. Indeed, a good case might be made out for the retention of Schedule 2 simply on the grounds that the self-insurance service rendered by the Schedule 2 employers saves the Board some of the burden and expense which would be experienced if a consolidated but considerably enlarged accident fund had to be administered and maintained by the Board.

Union representatives of the International Railway Brotherhoods who attended and testified did not support the demand for change nor did any other union representing employers in Schedule 2 industries other than the United Steelworkers which represented those employed in shipbuilding. There appears to be no widespread demand among workmen for the change. It may even be that many in the affected industries are opposed as were the workers mentioned by Mr. Justice Roach in his report. I do not feel that any workmen will be prejudiced or suffer injustice if the existing Schedule be allowed to continue. *I recommend that Schedule 2 be retained for the present at least.*

ACCIDENT PREVENTION

A large part of the evidence heard had relation to the role of the Board in accident prevention. Many who represented labour, though pressing for increased compensation allowances, emphasized that accident prevention and rehabilitation should rank first for consideration. Management, on the other hand, has displayed an equal interest demonstrated by active voluntary participation of its executive officers in the work of the safety associations and by the results obtained by many of the associations. I, too, am of the opinion that any social legislation relating to injuries to workmen should place accident prevention, rehabilitation and compensation in that order of importance.

In this province the role of the Board in accident prevention has been restricted to that of education through the medium of safety associations. The task of prescribing safety measures in industry and the enforcement of the same lies in the hands of various government departments. Most measures come within the jurisdiction of the Department of Labour, mining comes under the Department of Mines, fire precautions under the Fire Marshall in the Attorney General's Department, agriculture under the department of that name, natural gas and hydro under the Department of Energy and Resources Management, and lumbering under the Department of Lands and Forests. Some of these services had at one time been under the Department of Labour but, to promote efficiency and prevent overlapping, they were transferred to departments which had men already covering the various establishments involved. The extent of these services is to be seen in the accompanying chart which appears as appendix F to this report. For a full understanding of the matters which I must consider it is necessary to refer further to some of the services in question.

Mr. Eberlee, Deputy Minister of Labour, under whose department comes much of the safety inspection work of the province, stated that the safety organization of his department had, following the report of the Royal Commission on Industrial Safety, been brought up to date in 1961. It has five branches —a boiler inspection branch, an elevator inspection branch, an operating engineers' branch, a construction safety branch and an industrial safety branch all coming under the Director of Safety and Technical Services. The director and his assistant are professional engineers and under them is a research engineer whose task it is to provide factual information on the latest safety measures and codes. The Director maintains a close relationship with other departments of government and with the Board. A lengthy brief regarding the staffs and functions of the five branches mentioned above was furnished. I refer to only two of the branches.

In the brief filed with the Commission the following appears:

"THE CONSTRUCTION SAFETY BRANCH is headed by a professional engineer whose title is Engineer and Chief Officer. He has on his staff another professional engineer, 12 construction safety officers, 4 inspectors of caissons and a clerical staff, making a total of 20.

"This Branch is concerned with the safety of workmen engaged in the construction, alteration, repair, demolition or removal of buildings or other structures, streets and highways, in the excavation of trenches and in underground work in shafts and tunnels, caissons, coffer dams and any work under compressed air.

"The Branch's inspection staff work with the 246 municipally appointed inspectors enforcing The Construction Safety Act, and the more than 1,000 inspectors enforcing The Trench Excavators' Protection Act. The Branch officers instruct, advise and assist the municipally appointed inspectors, make regular visits to each municipality to carry out joint inspections and discuss interpretation and policy matters with local authorities.

"Last year there were 106,564 inspections of construction sites which resulted in 244 charges and 85 convictions. Stop-work orders were issued in 2,005 cases where dangerous working conditions existed and orders to correct unsafe conditions numbered 12,450. Caisson inspectors made 3,637 inspections on 519 projects that involved 165,413 lineal feet (30.5 miles) of tunneling."

I quote also part of what is said about another branch.

"THE INDUSTRIAL SAFETY BRANCH is comprised of two sections, the Engineering Section and the Safety Section. The Director of the Branch is a professional engineer and, in order to facilitate the application of some portions of the Act, he also has the title of Chief Inspector. He has on his staff an assistant, a chief engineer, 4 regional managers, an office manager, 10 professional engineers, 6 engineer's assistants, 1 foundry inspector, 59 industrial safety officers and 31 clerical personnel, a total of 115.

"The Engineering Section, under the authority of Section 16 of the Act, examines and approves drawings and specifications of factories, shops, office buildings and grain elevator ventilation systems prior to their construction or alteration. . . .

"The Safety Section of the Industrial Safety Branch, organizes the Province into four regions, Southern, Central, Eastern and Northern. Each region has a manager and one or more supervisors. The regions are further divided into districts, each with a District Industrial Safety Officer. Each region also has 3 female inspectors, whose prime concern is for the welfare of the female employees in their regions.

"The duties of the industrial safety officers are many and varied. They are required to make regular inspections of all industrial establishments in their districts and issue directions regarding unsafe machines and practices, inadequate ventilation, fire safety and sanitary facilities, and poor housekeeping. Many of their visits are special calls at the invitation of management, who often seek and value the advice of the officers when contemplating the introduction of new machines or processes which may be hazardous.

"The directions issued by the officers are followed up by head-office and in the event that the employer does not complete the required work in a reasonable time, and so inform the head-office, the officer is required to make a call-back inspection to review the progress, if any, and possibly recommend prosecution.

"The demands on the facilities of the Safety Section continue to increase to keep in step with Ontario's industrial expansion. In the fiscal year ending March 31st, 1966, 59 officers made 59,688 inspections and issued 53,632 directions to correct violations of the act and Regulations."

Mr. Smith, Chief Engineer of Mines, testified regarding the safety measures undertaken by his department and a reference to the Chart, Appendix F, will give some indication of the extent of the services, with accompanying personnel, afforded by other government departments.

With this brief summary of the province's role regarding safety matters, I turn to that of the Board.

THE ROLE OF THE WORKMEN'S COMPENSATION BOARD

Section 117 of The Workmen's Compensation Act is as follows:

"**117.** (1) The employers in any of the classes for the time being included in Schedule I may, with the approval and under the control of the Board, form themselves into an association for the purpose of education in accident prevention."

(2) If the Board is of opinion that an association so formed sufficiently represents the employers in the industries included in the class, the Board may approve rules of operation and, when approved by the Board and by the Lieutenant Governor in Council, they are binding on all the employers in industries included in the class.

(3) Where an association under the authority of its rules of operation appoints an inspector or an expert for the purpose of education in accident prevention, the Board may pay the whole or any part of the salary or remuneration of such inspector or expert out of the accident fund or out of that part of it that is at the credit of any one or more of the classes as the Board may deem just.

(4) The Board may in any case where it deems proper make a grant towards the expenses of any such association.

(5) Any moneys paid by the Board under this section shall be charged against the class represented by such association and levied as part of the assessment against such class.

(6) The word 'class' in this section includes sub-class or such part of a class or such number of classes or parts of classes in Schedule 1 as may be approved by the Board."

Under the provisions of Section 117 there are in existence seven safety associations which between them cover the various industries and occupations, other than farming, that come within Schedule 1 of the Act.

These are voluntary associations of employers having in each case a board of directors elected by association members, a chairman, and a general manager. Each has, as well, a full time staff engaged in safety work. The funds for the work carried out by these associations are provided by the Board from assessments levied upon industry. In addition, safety programs are carried on and financed by the industries which come within Schedule 2. I shall subsequently

discuss the work and efficiency of the safety associations in more detail. It is sufficient to say at this point that they restrict themselves to promoting safety measures by educational means and do not directly concern themselves with enforcement. They use all modern aids for their purposes and have had a substantial measure of success in reducing accidents.

Formerly the safety associations or their predecessors operated as independent organizations. Their only relationship with the Board appeared to be a financial one. Every year each association presented its budget and the Board levied the necessary amount against the class or classes in which the association was interested. Existing legislation at that time gave the Board no right to impose control and it exercised none. The provision in the Act, subsection (1) of section 116, read:

> "**116.** (1) The employers in any of the classes for the time being included in Schedule I may form themselves into an association for accident prevention and may make rules for that purpose."

A criticism of the system as it existed with recommendations for changes appeared in the report of Mr. Justice Roach in 1950. While not criticizing the associations or the Board, he commented upon the loose relationship that existed between them and the lack of any power in the Board to exercise control of association activities. He made specific recommendations designed to improve that situation.

Until 1960 his recommendations had not been implemented, and in that year a Royal Commission composed of His Honour Judge McAndrew as Chairman and Messrs. J. D. Bateman and G. Russell Harvey was appointed,

> "to inquire into and report upon all statutes and regulations administered by the Department of Labour that govern the safety of workers with a view to the improvement, simplification, clarification and modernization of such statutes and regulations."

In the report of this Commission there appeared a recommendation that "the accident prevention associations be placed under the direction and jurisdiction of The Workmen's Compensation Board."

The Commission also recommended that an "Ontario Safety Council" should be established with functions which I shall later discuss.

As a result, no doubt, of the recommendations made in each of the reports mentioned, section 117 (1) of The Workmen's Compensation Act was amended in 1964 to lodge control of the associations in the Board. By amendment to The Department of Labour Act the Labour Safety Council of Ontario was constituted as of December 15th, 1961.

Early in 1965 the Labour Safety Council which had, at the request of the Minister of Labour, conducted a study of accident prevention in Ontario, reported to the Minister, the Honourable H. L. Rowntree, Q.C., regarding the operations of various safety agencies coming under the Board's jurisdiction and

made certain recommendations concerning them. After a study by the Minister, the Board and the safety associations, of these recommendations, the Minister in a statement to the Legislature said:

> "The Workmen's Compensation Board will establish a safety education department, under a full-time director, to integrate resources and co-ordinate the programmes of the seven safety associations, at the operating level. This department will allocate funds to the safety associations and oversee their budgets; co-ordinate the development of safety programmes and the production of programme material; integrate safety association personnel administration; supply statistical guide lines to all agencies in the safety field and develop new programmes for areas outside the individual concern of any one association."
>
> He went on to say:
>
> "A close staff level liaison between the advisory, enforcement and education agencies will be created through the executive director of the Labour Safety Council, the new director of the safety education department of the compensation board and the director of safety and technical services of the Department of Labour."

The Safety Education Department of the Workmen's Compensation Board, referred to by the Minister, came into being on November 15th, 1965. Mr. J. W. P. Draper, P. Eng., was appointed Director of Safety Education. In the short time since he has been appointed, much has been accomplished. All safety association organizations but one have been brought together under one roof and substantial progress, the details of which I need not outline, has been made in co-ordinating their services. The Board now works, through its Director of Safety Education, in co-operation with the Executive Director of the Labour Safety Council of Ontario, the Director of Safety and Technical Services in the Department of Labour, and with those responsible for safety in other Departments of Government. A close relationship exists too with other safety groups such as the Canadian Industrial Safety Association, the Canadian Society of Safety Engineering and the Metropolitan Citizens Safety Council. The Board is also enabled and seeks to institute safety instruction in any areas not covered by the safety associations. It has, in addition, the benefit of many helpful suggestions that come from safety associations operated by various labour organizations.

Submissions

The submissions listed below, regarding accident prevention, were made to this Commission.

1. The role of the Board should be broadened to make it a centralized co-ordinating agency responsible not alone for education but for safety inspection, imposing of regulations and enforcement for breach of the same. The present limited role of the Board should be broadened to embrace the whole field of accident prevention.

2. Joint committees of labour and management should operate at plant levels and labour should be represented on the Board of each safety association.

3. An executive administrative committee from the safety associations, together with a representative of labour, should be appointed to co-ordinate and supervise the work of the associations.

4. A compulsory incentive plan based on experience rating should be instituted for all industries.

5. The efficiency of some safety association operations should be improved, the suggestion being that funds in certain instances could be used to better advantage if directed to more "on the job" training.

6. A wider statistical safety service should be instituted.

7. The Board should establish a museum to illustrate safety equipment and matters of the kind and a branch for accident cause research, including the experimental testing of safety devices.

8. Some minimum standards for those employed as "safetymen" should be established and provision should be made for the training of "safetymen."

I shall comment upon these and make recommendations when I deal with the work of the associations. For the moment I wish only to consider those relating to the possible enlargement of the role now assigned to the Board by current legislation.

Consideration of Submission that all Safety Measures should be Vested in the Board

Though some ambiguity existed in previous legislation, section 117 (1) now makes it clear that the work of the associations is to be restricted to "education in accident prevention". In this restricted role their efforts have been concentrated upon training of supervisors, in some cases training of employees, the giving of instruction at plant level, and the use of news media and the provision of posters, films and material of that kind, to promote safety measures and safety consciousness. The submission that this role should be widened to include enforcement of safety measures was supported by most, if not all, representatives of labour who appeared before the Commission. Industry as a whole opposed any change.

The general tenor of the submissions by labour organizations was to the effect that the Board should be given authority similar to that entrusted to the Workmen's Compensation Board in British Columbia where safety measures may be instituted, inspections conducted and enforcement exercised by the Board. A somewhat similar situation to that in British Columbia exists in the other western provinces. No data were furnished the Commission to indicate that the accident record in these provinces was better or worse than that of Ontario, though one witness, the General Manager of the Industrial Accident Prevention Association, stated that in none of those provinces was the record as good as that in Ontario.

Support for the recommended change is based upon the following considerations as enumerated by those who have advocated it:

(1) it is logical to expect that the organization responsible for the compensation of work injuries would have a more lively interest in the pre-

vention of accidents and would be more aggressive in imposing regulations and enforcing its decisions than would other agencies;

(2) the division of authority between government departments and the Board results in some overlapping, lack of adequate inspection, slowness in imposing desirable regulations, and delay in enforcing penalties for violation. On the other hand, the Board, which has prompt notice of all accidents, is in a position to act quickly if given the authority to do so.

These submissions, which have substantial weight, were received with favour by Mr. Justice Roach whose Commission I have previously mentioned. In his report he recommended that changes should be incorporated in the Act to allow the Board to make inspections, make safety rules, determine what suitable safety devices should be adopted, and have power where infractions occur to close down the whole or any part of the premises involved.

No action followed the report of Mr. Justice Roach until in 1960 the Commission to which I have already referred and which I shall call the McAndrew Commission, was appointed. Though by its terms of reference this Commission was restricted in scope, it was remarked in its report that there could be no complete review of industrial safety without taking under consideration the work of the safety associations operating under The Workmen's Compensation Act. As a consequence, the Commission reviewed the various matters considered by Mr. Justice Roach in his report. It also heard extensive evidence regarding the function of the accident prevention associations and the need of co-ordinated activity. Upon the basis of these studies it made two major recommendations as follows:

(1) that an Ontario Safety Council should be established to act in an advisory capacity and to "conduct a continuing study of all legislation and regulations pertaining to accidents and prevention, industrial health and hygiene, safety standards, inspection and enforcement, and make recommendations for legislative amendments." It was contemplated that the Council should "assist in the co-ordination of the work of the accident prevention associations with the voluntary safety effort, and in the integration of accident prevention work with the administration of safety legislation";

(2) (a) that the accident prevention associations should be placed under the direction and jurisdiction of the Workmen's Compensation Board;
(b) that there should be formed an executive administrative committee of these associations with a full-time representative of labour to co-ordinate and supervise the activities of the associations; and
(c) that the committee should be appointed by the Board and be responsible to the Board.

These recommendations were carried out with this change that a director rather than an administrative committee was appointed by the Board to supervise the work of the associations.

It is to be noted that the McAndrew Commission, after making a detailed inquiry into the activities of all agencies involved in the field, arrived at a

different conclusion from that of Mr. Justice Roach. It contemplated that inspection and enforcement should continue to be the field of government agencies and education the field of the safety associations under the Board.

In view of the last named comprehensive study, the recommendations made, and their later implementation, I would be hesitant to suggest that a change be instituted to co-ordinate all safety activity under the supervision of the Board. Quite apart from this, however, I should have to find, for reasons which I shall state, that the role of the Board should not be enlarged.

Those who support the status quo emphasize that the strength of each accident association lies in the voluntary support it receives from its members. Upon these and their officials must fall, speaking generally, the implementation of safety measures and their enforcement. While inspections and prosecutions have their place, if only because of physical limitations they can cover but a limited field; and by reason of what might be called a police role, those exercising such functions might not receive full co-operation in educational effort. With the voluntary association, however, elected as it is by industries within its field, it is to be expected that its representatives would meet with both a willingness to receive advice and every effort to carry it out. In other words, its field staff can talk to supervisory personnel with some authority and at the same time expect a sympathetic reception. As already stated, it is felt, and I believe with reason, that if the purpose of a visit from an association employee was believed to be not educational but regulatory, this spirit of co-operation would be lost. Voluntary active interest by senior management is evident in all the associations, undoubtedly stimulated by the fact that safety records have a direct relation to the assessments payable by industry and a notable record of achievement by the associations themselves lends weight to representations that no change be made.

Two major considerations in this matter also must be efficiency and cost. I place the former as first in importance but the latter in this instance is also of major significance.

When one considers that some 128,722 industrial establishments come within the jurisdiction of the Ontario Board, the efficient servicing of their requirements and those of the public is of importance. Efficiency is not something that springs ready-made into existence. It is achieved through the basic skills and aptitudes and professional qualifications of those carrying out the work and is perfected only following specialized study, experience, training and application. These techniques have contributed to the present organization in the Departments of Labour, Mines, Energy and Resources Management, Lands and Forests and other departments. The complexity of the work is to be gathered from the above mentioned brief by the Department of Labour. Approval or inspection of elevator installations, boilers, caisson equipment and operation, compressors, ventilation systems, structural stability and countless other installations, demands the services of many having professional qualifications and a staff having the benefit of past experience and training. It goes without saying, I think, that to duplicate the present establishment doing full or part time work on accident prevention, would demand the building up of a large staff with the basic skills, experience and professional qualifications of those now performing such

work in the Department of Labour and elsewhere. Even when built up it would be some time before the background of knowledge and experience necessary to such a staff would be acquired and a major dislocation with its effect on accident prevention might result. Even with the building up of such a department under the Board it would still be necessary for government departments to maintain, in most instances, inspection services of their own, services which are now co-related with that of inspection and enforcement of safety measures. It is probable, too, that many of the present personnel responsible for safety, having as they do the necessary qualifications and experience, would not be available for transfer to the safety associations. The Board, it is true, is vitally interested in the provision and enforcement of safety measures but its interest is confined to the safety of workmen. The interest of the departments, on the other hand, is wider and concerns the safety of the public as well as of labour. The matter of ministerial responsibility for these functions, it need hardly be said, is of primary importance. So long as responsibility for lax safety measures or enforcement lies in that quarter, it is to be expected that necessary changes in regulations or legislation stand more chance of rapid implementation than would a recommendation from an independent board such as the Workmen's Compensation Board.

Then comes the matter of economy. If, as this Commission has been told, a change of the type suggested would result in little reduction in staff of the government departments affected it would seem that the building of a new department under the Board would be far from economical. It would involve industry in heavy additional expenses for services now provided by the province and, far from decreasing such overlapping as now occurs, might result in increasing it. Industry might justly complain of the increased load in such circumstances.

Most important, however, is the effect which a change of the nature suggested would have upon the effectiveness of the primary role of the Board. That role is essentially a judicial one and there is no appeal from its decisions. The scales must be balanced between the claim of the individual labourer and the legitimate concern of his employer as to whether the injury arises from employment and whether the medical and disability assessments are justified. To impose on the Board the task of policing industrial establishments for infringements of safety rules and regulations would involve it in a function wholly different from the primary one which it must fulfil. As it is a Board from which there is no appeal, it is of the utmost importance that nothing occur, or be thought to occur, that would influence its judicial thinking and the confidence of those dependent upon it. If it had the duty of enforcing safety measures there might well occur trouble with individual industries or plants when added co-operation in safety measures was demanded. While this might not affect the Board in its other decisions, an employer might readily believe that it did and for him, as I have said, there would be no right of appeal. Witness after witness, from both industry and labour, has expressed a high regard for the integrity of Board personnel and for the general fairness of the Board in reaching its decisions. Indeed, as has been stated elsewhere, the degree of unanimity in this is a real tribute to the work of the present Board. No conflict of interest can occur so long as the Board is restricted to its present role.

Recommendation

It is the last mentioned consideration that I find to be decisive in arriving at my opinion, and I recommend that no change be made and that the Board's role in safety matters be chiefly an educational one through the medium of the safety associations.

Having reached this conclusion it is unnecessary for me to discuss the evidence, of which there was a great deal, relating to deficiencies and overlapping said to occur through the present separation of functions. In particular, much was said of the difficulty and delays which arise from the placing of inspection and enforcement under the Construction Safety Act in the hands of the municipalities. The arguments in favour of the co-ordination of all safety services under one body are certainly impressive and it might well be a matter for review and consideration by government. While I can see no serious objection to the removal of the safety associations from the jurisdiction of the Board if such an authority were to be established, it is to be noted that the McAndrew Commission, after its wide investigation regarding industrial safety, was opposed to this and recommended instead, the establishment of a co-ordinating body, an Ontario Safety Council, in place of an overall authority. I quote:

> "The superposition of a regulatory authority over the existing enforcement and accident prevention machinery would seriously disorganize the present establishments devoted to safety and the protection of the worker and, in particular, would lead to the danger of alienating an extensive voluntary effort in the field of safety education and training. It is recognized, however, that some form of co-ordination between those responsible for drafting and enforcing safety legislation, the accident prevention associations, and safety programs initiated by industry, is desirable.
>
> To this end the Commission recommends the establishment of an *Ontario Safety Council*, of possibly seven members, comprising representation from industry and labour and related interests associated with industry, including medical, engineering and other professions. It is to be stressed that the function of the Council would be advisory, and its authority would be restricted to inquiry and recommendations."

I limit my observations to a strong recommendation based upon my views expressed above, that the safety role now exercised by the Board should not be further extended.

Further Comment

Before leaving the discussion of this phase of my enquiry in which I have reached an opposite conclusion to that of Mr. Justice Roach, I would point out that the situation today differs in many respects from that which he had to consider. Since the time of his report there has been a major reorganization of government departments along safety lines, the safety associations have been made subject to the jurisdiction of the Board, and a safety director has been appointed to co-ordinate their efforts. An even more important development has been the establishment of the Labour Safety Council with labour representatives thereon to advise the Minister of Labour, under whose jurisdiction most industries come, regarding desirable safety measures including advice to the Board upon the

work of the safety associations. These developments are recent and I feel that many of the criticisms heard by this enquiry related to practices which, if not already remedied, are now, under the revamped structure, in process of correction. A close co-operation in reporting accidents and in exchange of information has been set up between the various safety directorates which appears to be operating smoothly. These changes, while not in themselves an answer to the submissions made for a fully co-ordinated operation, nevertheless constitute forward steps in that direction and should do much to achieve the same result.

THE SAFETY ASSOCIATIONS

In turning to consider the work of the safety associations I have had the benefit, in addition to the extensive evidence heard at this inquiry, of the very comprehensive and informative study which was conducted by the Labour Safety Council based upon an analysis of the work of the safety associations made by Professor H. W. Arthurs of the Osgoode Hall Law School. The report of the Council was published in January, 1965. While expressing appreciation of the work which the associations and their members had been doing, it was the opinion of the Council that the efficiency and success of that work could be improved and certain recommendations were made to that end. I shall refer to these later.

The seven accident prevention associations are the following:

Construction Safety Association of Ontario (C.S.A.)
Electrical Utilities Safety Association of Ontario (E.U.S.A.)
Forest Products Accident Prevention Association (F.P.A.P.A.)
Industrial Accident Prevention Association (I.A.P.A.)
Mines Accident Prevention Association (M.A.P.A.)
Ontario Pulp and Paper Makers Safety Association (O.P.P.M.S.A.)
Transportation Safety Association (T.S.A.)

Each association has its own manager and board of directors. The latter are elected by the member firms of the industries covered by each association and vary in number from 13 in the M.A.P.A. to 189 in the I.A.P.A. The large number in the I.A.P.A. is accounted for by the fact that all directors of the associations brought together to form the I.A.P.A. become directors of that association. Actual control in this instance, as with two other associations, is placed in the hands of a small administrative committee. The directors of these associations, all of whom serve on a voluntary basis, are senior officials of established firms, an arrangement which undoubtedly results in effective employer co-operation.

Total expenditure for 1965 of all safety associations amounted to $3,020,000, representing 3.8% of the assessment dollar. This compares with an expenditure of $2,592,000 in 1964, representing 3.5%, and $1,641,000 in 1960, representing 2.9% of the assessment dollar. These are very substantial increases but, as they arise from budgets submitted by the safety committee of the industries concerned, no complaints have been received as to the expenditures involved. The grant by the Board to each association is charged to the classes which it represents as part of its assessment. In this connection the following table is of interest:

GRANTS TO ACCIDENT PREVENTION ASSOCIATIONS

Association	*1964*	*1965*	*% Increase 1959-1965*
M.A.P.A.	$ 119,639	$ 139,724	31.2
T.S.A.	215,779	237,290	27.2
O.P.P.M.S.A.	52,920	57,607	41.5
E.U.S.A.	112,754	139,037	41.5
F.P.A.P.A.	148,428	167,784	55.8
I.A.P.A.	935,678	1,036,882	53.4
C.S.A.	1,006,787	1,252,488	249.0
	$2,591,985	$3,030,812	92.5

The relative cost to each association as a percentage of the amounts assessed against the industries served by it is as follows:

PERCENTAGE OF ASSESSMENT

Association	*1964*	*1965*
M.A.P.A.	1.8	2.2
T.S.A.	3.5	3.6
O.P.P.M.S.A.	4.8	5.0
E.U.S.A.	27.2	35.2
F.P.A.P.A.	3.6	4.6
I.A.P.A.	2.8	3.0
C.S.A.	4.7	5.4

As can be seen, the increases shown in the first table have been general. They have been due in part to administrative costs but result chiefly from greater activity by these associations in safety efforts. The discrepancies in the amounts expended by the different associations result from the size of their constituent elements and the character of the service which is involved. The I.A.P.A., as an example, has a budget representing one-third of all assessments but it serves approximately one-half of those coming under the jurisdiction of the Board—some 500,000 employees in manufacturing and some 200,000 in the retail trade. Similarly, the C.S.A. which covers some 225,000 employees has to deal with a large number of contractors working at various locations and in circumstances which do not as readily lend themselves to concentrated safety instruction as in many other industries. The "Percentage of Assessment" dollar table is significant as it reflects both exposure to accidents and the number of persons served by the association. In this connection, as can be seen, the E.U.S.A. expenditure is high but this association, in addition to safety work, does actual training of employees in preparation for their work and in safety measures. It has an excellent record of low accident frequency.

The recommendation made by the Labour Safety Council in its report was that "an agency be established to integrate and co-ordinate the administrative structures of the associations and to oversee their budgets."

Since that recommendation was made the present Director of Safety Education has been appointed by the Board and much has been achieved on the administrative level. All safety associations but one have been assembled under

one roof in the Yonge Street Arcade Building. This has resulted in consolidation of some part of the office staffs and significant savings in stationery, storage space and the cost of services. One addressograph serves all associations and a reduction in office staff has been accomplished. Consolidated buying under the Board has brought about substantial savings and a study to review the financial accounting systems of the associations is being made. Accommodation is also made available in the building for class instruction on safety work by the various associations.

All associations are able to show a substantial record of achievement over the years. Some in particular have furnished figures that are impressive. In a ten year period the F.P.A.P.A. indicates a 44.6 per cent reduction in accidents in logging operations and a 24.4 per cent reduction in sawmill operations. In the veneer plywood division the reduction has been 53.6 per cent. The O.P.P.M.S.A. reports a 56 per cent reduction in wood operations accidents and a 75 per cent reduction in mill operations. A graph filed by the M.A.P.A. indicated that since inception of the association in 1930 there had been a progressive decrease in accidents amounting in all to approximately 75 per cent. The I.A.P.A. too had the following record to report. I quote from a letter prepared by R. G. D. Anderson, General Manager of that association:

> "... in the years from 1921 to 1961 the number of temporary disability injuries in the manufacturing industries served by I.A.P.A. has come down from 72 to 35 for each 1,000 employees, permanent disability injuries have been reduced from 8 to 2 for each 1,000 employees and fatal injuries reduced from 5 to 1.4 for each 10,000 employees. Machine accidents have been reduced from 24 per cent to 13 per cent, infection cases virtually eliminated; all this in a period of a very rapidly expanding economy, the introduction of many new machines, materials and processes, ...
> It is to us a very significant fact that the Ontario system of compensation and accident prevention has produced among the lowest average assessment rates, the highest benefits to the injured and the lowest percentage of permanent disability injuries on the North American continent."

Recommendation

I have already noted the change in legislation which vests control of the associations in the Board. Up to the present time the Board has not sought to exercise it other than at the administrative level and all associations have expressed strong reluctance to have the Board interfere in their actual operations. It is to be expected, however, that the Board will now display an active interest regarding the conduct and effectiveness of these operations. While all associations appear to be active and doing good work it may be necessary in reviewing the budgets allotted to consider whether or not every association is doing all that it can do. As an example, it may be necessary to consider whether a particular association operates with a sufficient staff to cover the very wide and dispersed field for which it is responsible.

I would recommend that the Board do not hesitate to extend the duties of its director in this regard and where it considers it advisable to interfere directly with an association's operations that it will do so. It is assumed that the Board and

its director would use such powers with discretion and would not exercise them in such a way as seriously to affect the professional and voluntary effort of those associations which are considered to be efficient.

Association Activities

No two associations face the same problems and each association in turn forms its own views as to what form its activities will take. All associations depend heavily upon management and latterly upon co-operation from various unions to achieve their ends. As an example, the M.A.P.A., which has 65 operating mines employing 97 per cent of its people, is able to achieve results largely by the work of supervisory personnel and safety associations within the mines themselves. By reason of this a small office staff and a limited number of instructional staff is employed and teaching efforts are concentrated chiefly upon the supervisory staff of the mines. The associations which serve much wider fields and have to rely heavily upon promotional material of one type or another must concentrate to a greater extent upon work in the head office with the necessary staff to do it. The general picture may be seen from the following table furnished by the Board as to allotment of personnel during 1966:

1966	*General Manager*	*Other Supervisor*	*Office & Administration*	*Field & Promotion*	*Supervisory Training Quarters*	*Total*
F.A.P.A.	1	1	3	4	4	13
O.P.P.M.S.A.	1	1	2	1	0	5
I.A.P.A.	1	8	44	42	2	97
T.S.A.	1	2	6	8	1	18
E.U.S.A.	1	1	2	7	0	11
M.A.P.A.	¼	2	2½	0	5	9¾
C.S.A.	1	5	15	24	1	46

In the M.A.P.A., part of the salary and some of the administration expense is carried by the Ontario Mining Association. Association funds according to the demands of the association are disbursed to furnish promotional material, advertising, radio and television coverage, in collecting, analyzing and distributing analytical data, educational work in the form of management counselling and field safety work and instruction and in administrative costs. All spend some money under each of these headings. Any criticism that has come has been to the effect that large amounts are being disbursed under some headings which could be spent to better advantage elsewhere.

Promotional Material

This takes the form of posters, pamphlets, booklets, slides and films, radio and television. Associations also prepare and publish recommended safety codes for their members which are the subject of frequent review and, when necessary, of amendment. Recent surveys by the Labour Safety Council relating to the poster medium indicated that but few of those canvassed considered posters to be of much effect in accident prevention.

This opinion appears to arise from the fact that in most instances posters are not geared to the work in progress where they are placed. If they are to be used, and this applies also to slides, movies and other media, they can have the maximum impact if they contain some reference to the work in progress where they are shown, and if a large proportion of the work force is Italian, as in the construction industry, or French as in the logging industry, such material can be of value only if expressed in one of those tongues. A witness called by the Labourers' International Union who has had wide experience in safety work was of the opinion that posters with diagrammatic outlines of safe construction practices would be of greatest value and would be perused by those concerned. Some enquiry to ascertain that posters furnished are being used also seem in order. Generally speaking, it has been the practice of the safety associations to furnish posters to their companies and leave it to the companies to have them distributed. There was evidence to indicate that leaving it to the individual company in this manner has not proved satisfactory and that no posters were in evidence at a number of work situations.

The Labour Safety Council in its report recommended a greater effort to ensure that promotional material reached or came to the attention of employees. It should be made part of the task of association employees in their visits to urge this upon employers.

The Council recommended also that greater efforts should be made to furnish material of a bilingual nature and the Commission was informed by the director that much had been done along these lines since publication of that report. These efforts should be continued.

While it is desirable that promotional material be geared to individual situations there must also be a field of general interest where usable material of interest to all associations could be supplied. Substantial economies could probably be effected if this could be furnished from the present central source. A survey of this field should be made with the end in view of making such material available to all associations.

No extensive use has been made of mass media by the associations other than the C.S.A. and to a limited extent the I.A.P.A. In both cases it has been resorted to by reason of the difficulty of reaching the many companies and their employees which come under the associations' jurisdictions. In the case of the C.S.A. with approximately a quarter of a million employees to look after and the difficult task of carrying out "on the job" instruction with shifting construction projects, a decision was arrived at some years ago to try the extensive use of newspapers, radio and television to reach the workers. It was also sought by this means to reach them in their own languages. The initiative of the association in the face of these difficulties is to be commended but it has proved to be costly and almost half of its budget of $1,314,500.00 in 1966 has been allotted to this project. It is this that has come under attack at these hearings, the allegation being that this service is not reaching the workers and that a portion at least of the appropriation could be more usefully expended for "on the job" contacts and training. The association, however, reports that polls indicate that it is reaching a substantial number of those concerned, that much additional free publicity has

been given by those from whom time and space have been purchased, and that by a generous use of the ethnic press, churches, and theatres, much is being accomplished. Having satisfied itself of this effectiveness it is allotting for the year 1967 a sum, smaller in proportion though still large, to the purpose. At the same time it has increased by substantial amounts its allotments for its educational and management counselling departments.

The I.A.P.A. too in the current year tried the use of television on an experimental basis allotting $50,000 for the purpose of television, radio and advertising. Prior to 1966 its use of television had been restricted to the circulation of six films, at a cost of $1,500 per film, to television stations which would run them from time to time as a service to the public. The expenditure during the current year was for a pilot project on Channel 11 in Hamilton. A survey by O.R.C. International Limited was conducted in Scarborough on the outskirts of Toronto to evaluate the effectiveness at that distance of the coverage. I shall not refer to the results in detail. It is sufficient to say that they were considered sufficiently impressive by the I.A.P.A. to cause it to double the allotment for this purpose in the year 1967.

It is impossible for me to evaluate the success of these programmes or to set them off against the criticisms which have been heard concerning them. Obviously the associations concerned, having satisfied themselves as to their value, must be left to use their good judgment in the matter. It goes without saying that, as their member firms have to pay the cost, an association will not continue to spend large amounts for any purpose unless it feels it to be justified. It should not, of course, be done at the expense of more valuable management counselling and field work and, as already stated, the C.S.A. by its increased allotment for these purposes indicates its appreciation of those factors.

In reviewing the initial projects of the C.S.A. of several years ago the Labour Safety Council in its report had this to say:

> "A more economical approach to mass media advertising, however, might well focus generally on all types of industrial safety rather than merely on construction. It would be unreasonable to place the burden of such a general campaign on a particular association and there would appear to be a need for some other agency to undertake it."

I am in accord with this opinion and the Board through its Director is now in a position to review the matter with this in view.

Recommendations

I Recommend

(1) *that where companies have a large number of employees speaking a language other than English, a greater effort be made by the safety associations concerned to have safety notices which are furnished such companies appear in bilingual form.*

(2) *that periodic inquiries be made by associations to make certain that promotional material furnished by them is placed at work locations.*

(3) *that the Board study the possibility of producing on a uniform basis promotional material which might be of use to all or more than one of the safety associations under its control and arrange where possible to produce such material; and that the Board apportion the cost of such service among the individual associations in such proportion as it sees fit.*

Management Counselling and Instruction at Work Level

All safety associations consider management counselling and basic field work to be their most important services and all have staffs actively operating for these purposes. Some do little field work, others do a lot. It depends in all cases upon the situation as the association sees it. The value of supervisory training is of first importance. If supervisory personnel is properly trained much of the safety training is imparted to the labourer when he is being instructed on how his job is to be performed. On the field level many companies have already in existence, safety committees, and great help is now received from most unions. A continued effort must be made to have such committees established where not already in existence and to make full use of the co-operation offered by the unions. A suggestion advanced that "safetymen" be employed by the associations to go on the job and talk to workmen should also be considered, particularly where operations are widespread as in the construction industry. Apart from my previously stated opinion that it is within the purview of the Board to review the situation to satisfy itself that individual associations are allocating sufficient staff for these purposes, I have no comment to make. Decisions as to work allotment must in general be left to individual associations.

STATISTICAL SERVICE

The Labour Safety Council in its review of this matter noted complaints that the Board's service to the associations was inadequate since it is based on rate calculation alone and as a consequence is too slow. Frequency figures, too, were based on estimated, as opposed to actual, time worked. Current figures and statistics analyzing the cause and nature of injury together with a realistic firm by firm analysis for promotional purposes were recommended. At the time of the Council's report some, if not all, the associations were seeking to remedy the situation by collecting from their members information to achieve the same result, but the information so collected was frequently incomplete and lacked statistical uniformity. The Council's recommendation was

> "That a central statistical service be established to provide data for all agencies in the accident prevention field."

The complaints heard at that enquiry have not been repeated before this Commission, but it has been suggested that Form 7, which contains the employee's report of the accident, be broadened to give more specific details regarding related circumstances. A copy of the report always goes to the government department concerned and is summarized for the use of the safety associations concerned.

In the meantime progress has been made. A Board memorandum was filed in this connection indicating the extent of the services now furnished. Daily, weekly and monthly information is available to all and, to four of the safety associations

which requested it, special yearly reports are provided. All this is made possible by an extensive computer system. At the present time new types of computers are being installed which in turn will allow a different and improved approach to data processing. In order to consider what might be provided, each of the safety associations and the Department of Labour have been asked to determine their statistical and informative requirements of the future. An independent analysis of these requirements is also being made by research personnel of the University of Waterloo under a grant from the Labour Safety Council of Ontario and the information and conclusions which it is anticipated that this study will provide can aid the Board in assessing its future programme.

In view of the last mentioned study I make no recommendations. It must be left to the Board upon receipt of the analysis, in co-operation with the safety associations, the Department of Labour and other departments, the Labour Safety Council, and the various employer associations whose members will be called upon to furnish the necessary material, to arrive at a conclusion as to what may be furnished in the way of safety statistics. If, as a result of this analysis, it is felt by the Board that some legislative authority is necessary to allow it to require employers to supply further data, it should be provided by a suitable amendment to the Act.

THE ROLE OF LABOUR IN ACCIDENT PREVENTION WORK

Three suggestions present themselves for consideration, namely:

(1) the possible superimposing of a joint committee of labour and management over the safety associations;

(2) the possible inclusion of one or more representatives of labour on the Board of each safety association;

(3) the mandatory establishment of joint committees at plant level.

There is little need to emphasize the fact that the labourer himself who may be exposed to danger is the one most concerned about measures for accident prevention and that many unions now consider that this field should constitute their primary interest. It must also be true that more can be achieved by willing co-operation than by some more authoritative measures. These considerations on their face seem to make it logical to have labour representation in each of the bodies above referred to. With these, however, other considerations must be taken into account which lead me, in some cases with reluctance, to feel that I should not accept the suggestions made.

Supervisory Body

In both the Roach and McAndrew Commission reports, a recommendation was made that the work of the autonomous safety associations should be brought under the jurisdiction and control of the Board. Judge McAndrew recommended further, as I have stated, that the Board should exercise its control by appointing an executive administrative committee of the safety associations, with a full time representative of labour as a member, to co-ordinate and supervise association activities. By amendment to section 117 of the Act in 1964, control of the associations was lodged in the Board. Subsequently, in its report of January

1965, the Labour Safety Council recommended a further change in section 117 to authorize appointment by the Lieutenant Governor in Council of a safety education commission of three members, one to be from management, one from labour, and one who should represent neither. This commission was to exercise, pursuant to power delegated by the Board, the latter's functions in relation to safety education and accident prevention. Since that time the Council's membership has been increased to seven labour representatives and seven safety association representatives. While not aware of what led to the decision which I previously mentioned to have a director appointed by the Board rather than the recommended body to exercise supervisory functions, I understand that this came about as a result of consultation and deliberation by the Minister of Labour, the Labour Safety Council and the Board. I must assume it was felt that with the Labour Safety Council in existence, having equal representation from labour and the safety associations and with a full time staff, it was unnecessary to duplicate it by appointment of another committee. It is, of course, true that the Council can assert no direct control over the safety associations but, by its composition containing as it does a strong labour representation, it is in a position to work closely with the associations in the interest of both labour and management.

The safety director appointed by the Board represents neither industry nor labour and it is to be expected that he will approach his duties with an independent and enquiring mind. The Ontario Federation of Labour and the Canadian Labour Congress have active standing committees applying themselves to questions of industrial safety, and unions, such as the United Steelworkers of America, have full time personnel working on these problems. These bodies, I am sure, stand alert to notify safety associations, the Board and government regulating departments of desirable changes or failure to observe existing regulations. An independent safety director exercising control under the Board should be able to advance diverse views on safety measures and, if necessary, direct reform or change as effectively as if a supervisory committee were in existence. The various committee recommendations which I have mentioned were before the government when the decision regarding the form of the present establishment, announced by the Minister of Labour in 1965, was made. I would not now recommend any change.

Labour Representation on Safety Association Directorates

Representations have been made to this Commission, as they have to previous commissions, that there should be one or more representatives of labour on the board of each safety association. No high degree of emphasis was placed upon this matter by those asserting it but vigorous opposition to it was expressed by directors of the various associations. Without exception it was the contention and expressed fear of the latter that the harmony and resulting effectiveness of the associations, composed entirely as they are of senior management personnel, would be seriously affected. The arguments in favour of labour participation are that it would further stimulate the awakened interest of those representing labour in safety measures and this in turn would communicate itself to those working at plant level. It would undoubtedly tend to make labour more of a partner in a mutual effort and, where the representative was a union man, it would no doubt

make more available to an association in its work the many union meetings throughout the country. It is true that only about 30 per cent of the work force in Ontario is unionized, but a number of the associations have the major portion of their membership in larger companies which are unionized. With these associations, at least, one would expect a favourable result. The fullest labour participation is unlikely so long as it is excluded at the policy making level.

While firmly of the opinion that labour participation is desirable and that it would not have the results feared by those composing the safety associations, I am not prepared, in view of the serious opposition that has been shown, to do more than make a strong recommendation to each association that it include one or more labour representatives on its directorate. I do no more because I recognize that the success of each association has been due to voluntary and devoted effort by top management. I do not wish to disrupt that effort but would like a frank appraisement to be made by those concerned to see if their work cannot be made more effective by the change suggested.

Labour Participation in Plant Safety Committees

In this I am again assisted by the research and report, previously mentioned, of the Labour Safety Council. It had before it a poll conducted by the Ontario Federation of Labour among union locals to which some 29 per cent replied. Sixty-five per cent of these replies indicated the existence of safety committees in the plant. Reference was made also to a study conducted by the I.A.P.A. in the same year, 1964, in which, of some 1,399 firms sampled, over 50 per cent had safety committees. These figures are sufficiently recent to be adopted for this report. They indicate that plant safety committees exist in many industries though by no means in all of them. Other figures before the Council indicated

(1) that, while employee representation in safety committees was frequently determined by the employees or by their union, in an even larger number they were appointed by management;

(2) that the safety records of companies with committees was substantially better than in those with none.

In every case the figures were but samples of the whole work force but none of the evidence before this Commission indicates that the facts they established pictured a situation differing in any degree from that in industry today. Complaints were made that where committees existed, they were frequently given little to do and that committees would be more effective if meetings were held on the job on company time. The evidence made it quite apparent that while some companies make very effective use of safety committees, many do not.

This situation was considered by both the Roach Commission and the McAndrew Commission, each of which made firm recommendations. The reasoning behind each was expressed in the report of the McAndrew Commission, as follows:

> "The fact is that a safety program based solely on regulations, slogans, posters and policing by inspectors, leaves something to be desired, and that *something* is to make safety a personal problem to the employees on the job and thereby generate an attitude that makes the employee a stern policeman

of himself and his fellow-employees. This cannot be achieved so long as he regards the safety program as something imposed upon him by management."

In each Commission mandatory provisions for the establishment of accident prevention committees were recommended with extensive regulations regarding them. The recommendation of the McAndrew Commission was that the Act should be amended to provide as follows:

> "The management of every operation in which 20 or more employees are employed shall on its own initiative, or when so requested by a majority of the employees, form and maintain an accident prevention committee consisting of not more than 12 and not less than four members to be designated in equal numbers by the employees and the employer. Employee representatives shall be restricted to regular employees having at least one year's experience in the operation."

In addition, extensive amendments were suggested to provide for regular meetings, reporting of accidents, minutes of meetings and investigations, to be forwarded to the Board, and that regular inspections of the premises be held.

The Labour Safety Council in its report did not adopt these recommendations and I agree with it. The various safety associations, some more than others, are aware of the value of co-operative plant level committees. They express their willingness to do all that is possible to persuade their members to support such committees. The difficulty of having functioning committees in some industries or on some jobs is one of the problems that management faces. The construction industry is a good example. The shortness of duration of many jobs, labour movement, high rise buildings and other circumstances prevalent in that industry are referred to. Safety committees, it is said, will be only as good as the co-operative effort that brings them into being and keeps them in existence. Compulsion as a means of achieving the result would be of doubtful value. More can be achieved by demonstrating to management and to its employees the value of such committees than by imposing on them measures which they fail to carry out or are unwilling to observe.

In general I agree that there should be no universal compulsory imposition of safety committees. It is my opinion, however, that when the record of a company is very bad, the Board should have, consistent with the control now vested in it, power to direct where practicable the formation of safety committees at plant level. A provision to this effect should be of assistance to the safety associations which now lack authority to do more than recommend improvement. The Board has now in its hands by proper use of Section 86 (6a) of the Act a powerful means of inducing improvement in safety measures. Its hand would be strengthened by this further change.

Recommendations

(1) *Section 86 (6a) should be amended by having added thereto the following:*

> "In addition thereto the Board may, subject to such regulations as to composition and other matters as it may impose, direct that the employer provide for and bring into operation one or more safety committees at plant level."

(2) *Every effort should be continued by the associations and the Board to encourage the formation of joint safety committees at plant level.*

(3) *Safety meetings should be held on the job where possible.*

MEDICAL RESEARCH AND SAFETY ENGINEERING

The Ontario Medical Association submitted that the Board should be urged to extend its activities in the following fields:

(1) research—medical
—engineering

(2) examination and certification of new machinery

(3) establishment of an accident museum.

The submission on the medical side dealt specifically with the necessity for further research on the relationship between emotional disturbance and the accident record of the individual. On the engineering side it was for research into methods of making machinery safe for the operator, industrial deafness and noise reduction, deleterious effects of new synthetics, and problems of the kind. Somewhat similar recommendations were made by various representatives of labour. The recommendation that the Board establish an accident museum where mechanical or other displays may be seen was advanced by others and has been the subject of specific recommendations elsewhere.

So far as research along medical lines goes, it is the practice of the Board, as it has been in the past, to authorize studies of the kind suggested. A back study project has been under way during the past four years. Dr. Gamarra has been working for the past year on a study of caisson sickness, and research into rotator shoulder cuff injuries and follow up of ankle injuries has been in progress for some time. These are but some of the studies undertaken by the Board. Considerable evidence was heard by the Commission of the work conducted by the Environmental Health Branch of the Department of Health. This department institutes research programmes from time to time and watches carefully all new developments where industrial health may be affected. More recently the Labour Safety Council has approved a research project in conjunction with and conducted by the University of Toronto into the underlying nervous or psychological causes of accidents.

On the engineering side the design of new installations must be approved and is fully studied by the Boiler Inspection Branch, the Elevator Inspection Branch or the Industrial Safety Branch of the Department of Labour according to the nature of the installation. A further inspection is had and approval granted when it is put into use. All these branches are under the supervision of the Director of Safety in the Department of Labour. Similar provisions exist in the Department of Mines and other departments. Incidental to these activities is research in safety improvements and, in certain of the safety associations, similar research has been conducted. As an example, research by the I.A.P.A. solved accident production problems relating to accidents in the canning industry,

a drop-in bar was developed for plastic injection moulding machines in the drop forge industry, and a better type of power saw guard was evolved for those using this implement.

All the suggestions made have merit but, as I have shown, much is being done. At the moment full co-operation exists among the bodies concerned though in such circumstances the possibility of overlapping or failure to institute research because of divided responsibility is possible. What is needed, in my opinion, is not that all should be transferred to the Board but that some co-ordinating authority should survey the field and advise when particular research or other activity may most effectively be authorized. A body which might effectively pursue such a survey and report on what co-ordinating authority might operate or be established would be the Labour Safety Council.

The matter of an accident museum for mechanical and other displays to emphasize safety matters should be given serious consideration. As was pointed out at the enquiry, it is not always possible for an employee of a safety association to take an employer upon the premises of another employer in order to view some desirable improvement. It may be that an enterprise such as the training centre now being operated by the I.A.P.A. could be expanded to establish a museum of value to all associations or that one could be provided at the safety associations' headquarters. The Board needs no enlargement of its powers to expend moneys for such a project or for necessary research. It is anticipated that it will continue as in the past, to authorize them when needed.

FIRST AID APPLIANCES

The Board has assumed the responsibility through the safety associations of ensuring provision of adequate supplies of first aid appliances on work projects. Some criticism in detail of equipment available for first aid work at certain mining undertakings was made. The Mining Act provides that first aid equipment be provided at every mine as required by regulations under The Workmen's Compensation Act. While the Board has provided in its regulations for bush workers and others, details of the equipment to be provided, no similar regulations are in existence for mining projects. It is desirable that such regulations be made and that the suggestions advanced to this enquiry as to equipment to be provided be given favourable consideration.

OTHER FIELDS OF ACCIDENT PREVENTION

Reference has not so far been made to two fields in which the Board should operate. The first is in those industries not now covered by any safety association. Agricultural workers are not now covered nor are a small number of classes which, for one reason or another, have remained outside. Consideration should be given in the case of the last mentioned either to the organization of a safety association to meet their needs or to require affiliation with one of those in existence. In the case of agricultural workers this may not be practicable. The Board already works in close co-operation with the Department of Agriculture in this matter. This class has come only recently under the Board's jurisdiction and studies should be instituted to ascertain how maximum help and advice can be given to workmen and employers in that occupation.

The second field open to the Board is that of providing safety information and instruction to the public at large. In many instances literature and educational material of value to industries now in safety associations will prove of value to others. It is desirable, when feasible, that the Board should be in a position to provide this service. If and when such service is given it would be unfair to expect industry to shoulder the cost. If any major disbursements are made or contemplated for this purpose, a grant from public funds to cover the cost would be desirable.

REHABILITATION

Good rehabilitation requires the continual efforts of doctors, employees, labour unions and service agencies. Its importance cannot be overemphasized, not as a means of lessening the employer's load so much as for the mental and physical well-being of the injured person. There is general agreement that in the patient's own interest he should be returned to work, even of a different or modified type, as soon as he is physically able to work. It is the responsibility of the Board to do all that is possible to assure this result. Its operations come under two branches, that of physical rehabilitation and that of vocational rehabilitation. Physical rehabilitation is the responsibility of the medical department of the Board, and vocational rehabilitation that of a separate department. They are closely related because provision for vocational rehabilitation must be foreseen during the course of treatment in order that prompt action may be taken when the patient is ready to resume either part time or full employment.

PHYSICAL REHABILITATION

In this the Board seeks, so far as is possible, to make use of local hospital and convalescent services. These are not everywhere available and the Board has established at Downsview in Metropolitan Toronto a modern hospital and rehabilitation centre. During the year 1965 $3,075,346 was expended for the maintenance of this centre. It appears to be a model of its kind as witnesses without exception were complimentary in their remarks concerning it. The services provided are as follows:

(1) convalescent care;

(2) diagnostic and non-surgical treatment continued by physical medicine designed to preserve function and to achieve a maximum restoration of lost function in the shortest possible time;

(3) treatment and evaluation clinics, an amputee clinic, a neurological clinic, a back rehabilitation clinic and a general trauma clinic which are in operation;

(4) research activities; I have mentioned elsewhere some of those now in progress; in addition, each clinic conducts its own research and the necessary follow-up relating to its work.

The Board has reported for the quarter ending June 30, 1966, that 76 per cent of those discharged from this hospital as available for work were returned to immediate employment. Of these 41 per cent returned to former employment, 32 per cent to modified employment and 3 per cent to new employment. Those who did not return to work immediately received further service from the Board's field officers. This record, which varies little from that of the previous year, seems to speak for itself of the work conducted at this centre.

VOCATIONAL REHABILITATION

Section 53 of The Workmen's Compensation Act provides:

"**53.** To aid in getting injured workmen back to work and to assist in lessening or removing any handicap resulting from their injuries, the Board may take such measures and make such expenditures as it may deem necessary or expedient, and the expense thereof shall be borne, in Schedule I cases, out of the accident fund and, in Schedule II cases, by the employer individually, and may be collected in the same manner as compensation or expenses of administration; provided that the total expenditure under this section shall not exceed $200,000 in any calendar year or such greater amount as may be authorized by the Lieutenant Governor in Council."

The amount mentioned in this section is interpreted to be for purposes of vocational as contrasted with physical rehabilitation. The cost of physical rehabilitation is assumed by the medical department of the Board. Amounts expended by the Board for vocational rehabilitation in recent years have been:

1963	—	$172,413
1964	—	272,883
1965	—	283,500

The amount for 1966 will be somewhat larger. In each of the years 1964, 1965 and 1966 it has been necessary for the Board to secure an Order-in-Council to increase the allowance stipulated in the Act, the amount authorized by the 1966 Order in Council being $300,000. No difficulty has been experienced in securing the Orders in Council for this most important work and it is unlikely that a request for one would be refused. Under the circumstances *this restrictive provision in section 53 of the Act would appear to be unnecessary and I recommend that it be deleted.*

All work in this field is handled by the Vocational Rehabilitation Department of the Board operating from its head office in Toronto and from district offices in Windsor, Kitchener, Ottawa, North Bay (with a branch office in Sudbury) and Port Arthur. The service provides social and vocational counselling including vocational assessment, selective placement and employment and vocational retraining.

In cases of minor injury re-employment is secured when the man himself contacts his employer or when his doctor reports to the employee that he is able to return to work. Where a difference of opinion exists between the patient's doctor and that of an employer regarding fitness for work, an independent medical opinion is sought. In the more serious cases plans for rehabilitation run concurrently with the medical treatment in order to minimize the delay when recovery occurs. When there has been partial recovery a letter goes from the Board on a G.6 form notifying the man of this and suggesting discussion with his doctor regarding the type of work he might do and that he contact his

employer in that regard. Vocational counselling is given where required and every effort is made to find the injured person suitable employment, if possible, with his employer, and, if that is not possible, then to find it elsewhere.

Training itself is of three types:

(1) training on the job;

(2) technical training;

(3) business training.

Most men desire re-employment in the work or area with which they are acquainted rather than training under numbers two or three above. Of those requiring rehabilitation services in 1965, 93 per cent were rehabilitated. Of that number, only 12 per cent were seriously disabled and required training to fit them for a change in occupation.

The Board does not operate training centres of its own but arranges to pay for such services in the area closest to the home of the injured man. The most frequently used are:

—vocational training centres operated by the Province under a federal-provincial agreement;

—provincial institutes of trades;

—registered private enterprise training schools;

—business schools.

It makes use as well of community educational facilities to provide academic upgrading courses ranging from basic to high school level.

A close liaison is maintained with the Ontario Rehabilitation Services Branch of the Department of Public Welfare and with the regional offices of the Canada Department of Manpower.

I have restricted myself to this short summary of the services provided by reason of the fact that, apart from several individual cases which were cited as examples of failure by the Board to provide the necessary rehabilitation, there was no very serious criticism of the services being rendered. The services which can be made available are naturally restricted to those possessing the primary education necessary to enable them to benefit from such training. One of the criticisms made had relation to such a case. The Board can but use its judgment as to what training it is able to provide.

While not perhaps phrased as criticism, various suggestions were made as to ways in which it was felt that the Board could broaden or improve its services. I shall refer to them.

FACILITIES FOR TRAINING

Mr. Craigs on behalf of the Ontario Federation of Labour expressed its view that more facilities for re-training were necessary and that these should be provided by the Board. He had in mind something in the way of a sheltered workshop or training school particularly for skilled workers. His criticism related particularly to the lack of facilities available in other than the larger centres. This is a situation of which the Board is aware and which it seeks to

remedy by bringing persons requiring such services to a place where training can be had. In all such cases the Board pays compensation while a workman is under training. The Board considers it not to be feasible to set up schools of its own for particular trades. If a school is established for welding, for example, it may be full today while tomorrow there may be no accident cases requiring its use. Under such circumstances, to set up schools for particular trades would be far from efficient. It is considered that the only practical answer is to make use of the existing and expanding facilities provided by government or by private enterprise.

The Board has, however, for some time been using the facilities of Operation Reliance Incorporated for patients at its rehabilitation centre as a pilot project along the lines suggested by Mr. Craigs. Operation Reliance Incorporated is an industry in Toronto which employs handicapped people only and under agreement with the Board it accommodates a number of suitable workmen for purposes of industrial rehabilitation. The objectives in using these facilities are:

(1) re-establishment of work habits in an industrial setting;

(2) work adjustment for the man who must make a change in occupation;

(3) an aid to evaluation of vocational potential.

Types of referrals are:

(1) skilled workmen who because of serious injury or prolonged lay-off require evaluation and conditioning in an industrial situation;

(2) workmen who regardless of background cannot return to work or who intend to seek factory work;

(3) workmen who require work conditioning beyond that furnished in the rehabilitation centre.

Operation Reliance Incorporated is not used as a training facility so much as a means of evaluating vocational potential and the re-establishment of the workman in productive employment. The programme has been in effect for some six months and upon evaluation will enable the Board to consider its effectiveness. If similar facilities are not established by the other agencies mentioned and made available to the Board, an expansion of the present experiment to a full time operation appears to be desirable.

A word should be said about the Ontario rehabilitation services now used by the Board. These services, which cover rehabilitation and re-training of disabled people are furnished under a federal-provincial agreement which expires in 1968. It has recently been announced by the Federal Government that its newly established Department of Manpower would, commencing on April 1, 1967, assume financial responsibility for adult training in this province, and it is assumed that additional facilities will be made available as a result. The situation is at present under review by federal and provincial authorities. The expanded facilities which are contemplated will, it is presumed, be made available to the Board which will welcome the opportunity to expand its services. In this connection spokesmen for the Ontario Federation of Labour expressed particular concern regarding the necessity of having facilities provided

for training older workmen who suffer injury and are unable to resume work in their former employment. It has been announced by the Federal Government that this will be one of the projects to be undertaken by the Department of Manpower. A particular effort by the Board is required here, but in this, as in the general field I have mentioned, no recommendation can be made pending further information as to government action.

To summarize, it has been made evident at this inquiry that the Board is concentrating on rehabilitation services and has an active and effective department doing rehabilitation work. It has been alive to the need for expanding these services in the past and appears to be making use of every available agency for the purpose. I see no evidence of complacency on the part of the Board in this department and have no recommendation to make.

RIGHT OF ACTION

By section 9 (6) of the Act no employer coming within Schedule I of the Act and no workman of an employer in Schedule I has a right of action against an employer in Schedule I or against any workman of such employer.

As the great majority of employees come within Schedule I the section has application to most of the working force in this province. The provision in question owes its origin to the concept which formed the basis of the first Act, namely, collective responsibility by industry for all injuries to workmen, attributable to employment. No longer was the injured workman to be faced with a large judgment against an employer unable to pay and no longer was the small industry required to face the hazard of bankruptcy through inability to satsify such a judgment. It was in effect a mutual insurance scheme by all employers whereby claims should be paid without question as to fault from a Board accident fund to which employers were required to contribute.

The system then established has been maintained with little change for over half a century and the freedom from litigation which it affords has received the whole-hearted approval of both management and labour. No complaints regarding the provision now considered were made before either Mr. Justice Middleton or Mr. Justice Roach during the inquiry which each conducted; and but two submissions advocating elimination of the subsection have been made to this inquiry. One of these was from an individual and the other was from the Ontario Medical Association. In the case of the medical profession it appears that a number of doctors operating clinics or with large offices have taken advantage of the provision in section 90 by which they can bring themselves and their employees under the Act. The complaint is that when they do so their rights of action against other employers within Schedule I or their employees are destroyed. The reason for this, as I have stated, is that, in limiting their own liability through the collective insurance scheme they also limit the liability of their co-insurers. The particular merit of the scheme lies in the protection it gives to small scale operations. It is part and parcel of the joint insurance project. In the case of the doctor he has a choice either of joining in it and submitting to its restrictions or of privately insuring himself and his staff with no limitation upon his right of action against third parties. The same freedom of choice does not extend to the individual workman who has registered a complaint in this same matter. I can but refer in his case to the historical background of this legislation as outlined at the beginning of this report. The advantages reaped by the one side are offset by those of the other. On the one hand the negligent employee who receives compensation as of right would formerly have received none, on the other the non-negligent employee such as the complainant sacrifices a substantial amount. It is a far from perfect result but is founded in the Act upon a rational basis.

Recommendation

I must assume from the lack of complaint other than in the above two instances that the provisions of section 9 (6) meet with the general approval of both management and labour and as a consequence I recommend no change.

THIRD PARTY RECOVERY

The City of Toronto, an employer under Schedule 2, has drawn attention to certain sections of the Act which call for clarification and has made submissions as to change. There was no opposition on the part of those appearing at the hearings to the changes suggested.

The first submission is in respect to section 9 (1) which reads:

"**9.**—(1) Where an accident arising out of and in the course of his employment happens to a workman under such circumstances as entitle him or his dependants to an action against some person other than his employer, the workman or his dependants, if entitled to compensation under this Part, may claim such compensation or may bring such action."

As may be seen the election of the injured worker is between "compensation" and an individual action. The Act elsewhere makes it clear that compensation and medical aid are distinct—section 5 is an example— and the point is taken that the unintentional result is that a workman can enforce his rights by action and at the same time claim medical aid under the Act. The distinction becomes important also when we come to consider section 9 (3) which permits the employer, where compensation has been paid, to bring an action in the employee's name. *Section 9 (1) should be amended, and I so recommend, by deleting the word "compensation" in line five and again in line six and substituting therefor the word "benefits" in each place.*

A representation was made also regarding section 9 (2) which states:

"**9.** (2) If an action is brought and less is recovered and collected than the amount of the compensation to which the workman or his dependants are entitled under this Part, the difference between the amount recovered and collected and the amount of such compensation is payable as compensation to the workman or his dependants."

This section as it stands refers only to recovery in an action. In fact, recovery in some cases occurs by an intervening settlement and no judgment in the action is taken out. *An amendment is justified and I would recommend that it be effected by insertion after the word "collected" in the first line thereof the following words: "either by a judgment in the action or by settlement."*

The next submission refers to the election to take compensation. In many instances election has been postponed pending negotiations by a workman with a third party or his insurers and in the intervening period the Schedule 2 employer is not usually a party to the negotiations. It is asked that a workman be required to elect within three months, or such further time as the Board may allow, whether to take benefits under the Act, failing which he shall be presumed to have elected to claim such benefits. Before considering this submission I pass on to two further submissions by the Corporation. The first is that any settle-

ment made by a workman prior to election should be deemed to be invalid and the second that a settlement made subsequent to election must be submitted to and receive the approval of the Board. The Board would thus be able, having in mind the possibility of a claim under section 9 (2) to satisfy itself that the settlement was adequate and in the best interests of the workman or his dependants. I find merit in each of the latter two submissions. If these amendments are made I see no necessity for that referred to in the first part of this paragraph.

My recommendation is that section 9 (2) be amended by adding thereto the following:

Any settlement made by a workman who has elected not to claim compensation must receive the approval of the Board. Failure to secure approval by the Board prior to the making of the settlement will disentitle a workman to the benefits conferred by this subsection.

Both the Municipality and the Board request that section 9 (3) be amended. The subsection reads:

"If the workman or his dependants elect to claim compensation under this Part, the employer, if he is individually liable to pay it, and the Board, if the compensation is payable out of the accident fund, are subrogated to the rights of the workman or his dependants and may maintain an action in his or their names or in the name of the Board against the person against whom the action lies, and any sum recovered from him by the Board shall form part of the accident fund."

The objection taken by the Municipality to the present wording of this subsection is that it fails to make clear that all payments made on behalf of the workman or his dependants are recoverable in the action by the employer. Thus it is said that a Schedule 2 employer in such an action can only stand in the place of the workman to enforce his, the workman's rights. The argument follows that only the items of loss by the workman are recoverable and, if he has been put to no medical expense and has lost no wages by reason of payment by his employer, he has not suffered damage to the extent of such payments. It appears that this interpretation may be derived from the present wording of the section and that a tort-feasor thereby may avoid payment of damages otherwise recoverable against him. As this subsection was enacted for the benefit of the Board or the Schedule 2 employer an amendment is called for.

An addition should be made to subsection (3) to provide that
"Recovery may also be had in the action for any amounts expended upon the workman's behalf by way of compensation or other benefits."

The Board in turn asks for a revision of the last part of the section which provides that "any sum recovered from him by the Board shall form part of the accident fund." It has been the practice of the Board, and I understand of most employers individually liable, to turn over to the claimant or his dependants any surplus which may remain after payment of the Board's or the employers' costs. In any such instance an agreement is received from the claimant or his dependants to apply such surplus against any future compensation or benefits to which he or they may become entitled. *In order to regularize this practice the*

words "any sum recovered from him by the Board shall form part of the accident fund" should be deleted from the subsection and in place thereof the following should be inserted:

> *"and any surplus over and above the costs of the Board or of the employer individually liable shall be paid to the claimant or his dependants under an agreement to apply such surplus against any future compensation or benefits to which he or they may become entitled."*

It is to be noted in connection with the above amendment that an agreement of the kind mentioned when made by an employer individually liable to pay compensation is subject by section 18 to the approval of the Board.

An objection was taken by one employer to the mandatory requirement of the above provision. I would not give effect to this objection.

I accordingly recommend that the above changes in the subsection be made whereupon section 9 (3), as amended, will read:

> "If the workman or his dependants elect to claim compensation under this Part, the employer, if he is individually liable to pay it, and the Board, if the compensation is payable out of the accident fund, are subrogated to the rights of the workman or his dependants and may maintain an action in his or their names or in the name of the Board against the person against whom the action lies, and any surplus over and above the cost to the Board or of the employer individually liable, shall be paid to the claimant or his dependants under an agreement to apply such surplus against any future compensation or benefits to which he or they may become entitled. Recovery may also be had in the action for any amounts expended upon the workman's behalf by way of compensation or other benefits."

The City of Toronto made further submissions to which I do not accede. It asks for legislation to provide that actions brought by workmen of Schedule 2 employers should be tried without a jury. Without giving my reasons, of which there are several, for not approving this suggestion, I simply decide that the proposal is without merit. The next is for an amendment to provide a bar to any claim for benefits under the Act for injuries or damages which were not apparent or reasonably foreseeable at the time when the workman elected. A provision of this type would have the effect of nullifying the protection given the workman by section 9 (2) to which I have already referred. Section 9 (2) is one found in some form or another in all compensation legislation. It has been in the Ontario Act from the beginning and the principle expounded in the section is firmly established. I would do nothing to affect it by an amendment of the type suggested.

LIEN CLEARANCES

Section 113 is as follows:

"**113.** In the case of a work or service performed by an employer in any of the industries for the time being included in Schedule 1 for which the employer would be entitled to a lien under The Mechanics' Lien Act, it is the duty of the owner as defined by that Act to see that any sum that the employer is liable to contribute to the accident fund is paid and, if any such owner fails to do so, he is personally liable to pay it to the Board, and the Board has the like powers and is entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment."

Representations concerning the section came from the Ontario Federation of Construction Associations. The submission was this:

"Section 10 of the Act provides for liability and reimbursement to the Board by the principal in the event of non-payment. It should be noted that in construction, a principal contractor, before final payment of the holdback, is required to produce a Workmen's Compensation Board certificate which shows that he is in good standing with the Board as far as payment of compensation is concerned. In addition, and to protect himself, the principal contractor requests a similar certificate from the Board to ensure that the subcontractors are in good standing with the Board. In view of the collection of compensation on an annual basis, the Board while issuing the certificate of good standing, *is not* really in a position to state whether the contractor or subcontractor is in fact in good standing with the Board until the annual payment is made. As a consequence, and because of the liability of the principal under this section of the Act, claims can be made on the principal for non-payment, and the Board has many times exercised its prerogative in this respect."

The submission was supported by Mr. Nicholls appearing on behalf of the Association. His testimony was:

"Mr. Commissioner, we have had unfortunate cases where sub-contractors have gone into bankruptcy. The information on the certificate from the Workmen's Compensation Board stated that they were in good standing, but, unfortunately, it was well out of date and, in their bankruptcy, in fact, they were in arrears and we were assessed many thousands of dollars. If we had had even quarterly reports or certificates on their standing, it would have made a great difference, sir."

The allegations made met with a vigorous denial from Mr. MacDonald, the Treasurer of the Board. He testified

"I would like to talk a little bit about clearances because of the points raised this morning. It was suggested, I believe, in the situation described that some time after a clearance letter had been given we assessed the prime contractor concerned for a period before the date of that letter.

I would seriously question that that could possibly have happened. We will give any employer, that is, the prime contractor or the sub-contractor a clearance letter any time he askes for it, and if we have given such a letter in no situation would we try to assess him prior to the date of that letter. I am sure what must have happened in the case that was being discussed, is that they had a clearance, perhaps six months ago, and came along and made a settlement with the sub-contractor subsequent to the date of that letter. It is not necessary that we have actually collected the assessment for that prior period for us to issue the clearance. If the sub-contractor has a good record with us, we will issue the clearance even though he has not paid the assessment. We certainly would not charge the principal if subsequently the sub-contractor was unable to pay. We would never do that."

Mr. MacDonald described the practice of the Board regarding assessments. Roughly it is to send out assessments from March to September based upon payrolls for the previous year and estimates for the current one with the assessment due 60 days after issue. In general the result is that industry has the use of the year's assessed amount for half the year and the Board has the benefit of its use for the balance of the year. A previous system had involved two payments during the year and the change to the present one was made at the request of industry. Mr. MacDonald stated that, with the possible exception of the construction industry, employers would oppose any change from the present system.

The Board's practice according to Mr. MacDonald is to give a certificate in every case where a previous assessment has been paid. Unless an employer has had a bad payment record the certificate will be given even if he had underestimated his earnings for the previous year. He stated that a certificate was given without question in 95 per cent of the cases and in the others when refused or delayed there was good reason for so doing.

I am satisfied from what has been said that an owner or general contractor who makes payments on the strength of an up-to-date certificate from the Board that the payee is in good standing need have no fear that a claim will be made under section 113. I have no recommendation to make in this instance.

SUMMARY OF RECOMMENDATIONS

Briefly summarized, my recommendations are:

(1) that the maximum earnings ceiling provided by section 44(1) of the Act be increased to $7,000; and

that an amendment be made to permit the Board to increase the maximum earnings figure by $1,000 whenever the year-end statistics of the Board show that 45 per cent. or more of the allowed claims for lost time compensation during any year were by workmen with gross earnings, during the twelve months' period preceding the occurrence giving rise to their claims, of more than the existing maximum;

(2) that the provisions relating to the computation of earnings remain unchanged except for an amendment limiting the application of section 44(1) and (6) to temporary disability claimants and an amendment to section 40a regarding compensation for workmen who have suffered temporary disability following previous awards; this would make the section apply to all workmen who have previously become entitled to benefits under the Act and not to those only who have received awards for permanent disability;

(3) that the allowance for burial expenses under section 37(1)(a) be increased to $400 and that expense for cremation be considered a burial expense;

(4) that the compensation payable to a widow under section 37(1)(c) be increased to $125 per month; that the allowance payable to children where a widow survives be increased to $50 for each child and where no widow survives to $60 for each child; that the maximum monthly compensation stipulated in section 37(3)(b) and (c) be increased from $150 to $200 and that the maximum amount payable under section 37(1)(f) to dependants other than a widow, invalid husband or dependent children be increased to $150 per month;

(5) that the lump sum payment to a widow upon the death of her husband be increased to $500;

(6) that the Board may recognize serious and permanent disfigurement about the face or head as an impairment of earning capacity and may allow a lump sum in compensation therefor;

(7) that any increased compensation or allowances for past accidents should not be assessed against employers coming within the Act now or in the future and that section 35 be deleted;

(8) that there should be some review by all authorities of overlapping benefits; failing such a review by the year 1970 the Act should be amended to authorize the Board to have regard when awarding compensation to amounts payable under the Old Age Security Act and the Canada Pension Plan;

(9) that the letter advising a claimant of an investigation to be made should inform him of his right to be represented at the time of the interview by an adviser of his choice;

(10) that certain changes outlined in detail in this report be made to ensure early reporting of all accidents;

(11) that no change be made in the manner in which "accident" is defined by the Act;

(12) that the "waiting period" which the Act requires before any compensation becomes payable be reduced to one day with no compensation payable for the day of the accident;

(13) that the Board be required to draft and promulgate regulations relating to its appeal procedure and the right of claimants to proceed thereunder;

(14) that copies of advisory letters sent to workmen with respect to rejected claims be furnished to employers;

(15) that an independent workman's adviser be appointed by the Attorney General of the province to assist workmen in the preparation and prosecution of claims on appeal;

(16) that there should be passed a regulation of the Board requiring that any appeal be launched within three months of the decision from which appeal is taken, unless by reason of new evidence or other special condition the Board in its discretion allows leave to appeal;

(17) that x-ray plates and reports as well as reports on post-mortem examinations be made available by the Board to a claimant upon request;

(18) that employers contributing to the accident fund be granted the right to request a review of any weekly or periodical payment to a workman;

(19) that amendments be made to clarify the definition in the Act of casual labour and to provide for payment of compensation to rescue workers and to those who assist in fighting a fire by reason of an order made under The Fires Extinguishment Act;

(20) that there be no increase in the number comprising the Board at the present time and that the Board be given power by amendment to delegate its powers of adjudication and review to members of its staff;

(21) that section 107 be broadened to authorize the investment of Board reserve funds in investments authorized for trust funds under The Trustee Act of Ontario;

(22) that section 79 (1) be amended to provide that the Board file its annual report with the Minister of Labour in place of the Provincial Secretary;

(23) that Board forms and memoranda be reviewed and where necessary be altered to make clear that medical aid, where referred to, includes that provided by all practitioners mentioned in section 51;

(24) that the Board provide by regulation that a workman is entitled to have initially a free choice of practitioner;

(25) that section 51 (12) be amended to provide that a workman's right to transportation to his physician or hospital be restricted to those located within the area or within a reasonable distance of the place of injury;

(26) that amendments be made to sections 51 (1) and (2) to include the aid of optometrists;

(27) that some changes for the purpose of clarification be made in sections 51 (1), (2) and (3) and that section 51 (3) be amended to authorize the Board to repair or replace clothing worn or damaged by reason of the wearing of apparatus supplied by the Board;

(28) that in all cases in which there has been activation or aggravation of a pre-existing condition, a portion of the compensation awarded be paid from the Second Injury Fund;

(29) that a research project be instituted to study the incidence of arthritis and rheumatism among miners, compared with that suffered by workmen in other occupations;

(30) that additional measures be undertaken by the Board to ensure that pamphlets relating to the symptoms and treatment of caisson disease reach all workmen and others on compressed air projects;

(31) that further study regarding permissible sound levels in industry be made and that allowances for vertigo, headaches and other complaints in cases of bilateral deafness be increased;

(32) that legislation be enacted to authorize the Board to make agreements with other provincial workmen's compensation boards in Canada respecting claims where there has been exposure to silica dust in more than one province;

(33) that increased research regarding the effect of dust exposure on miners be undertaken;

(34) that where companies have a large number of employees speaking a language other than English, a greater effort be made by the safety associations concerned, to have safety notices which are furnished such companies appear in bilingual form;

(35) that periodic inquiries be made by safety associations to make certain that promotional material furnished by them is placed at work locations;

(36) that the Board study the possibility of producing on a uniform basis promotional material which might be of use to all or more than one of the safety associations under its control and arrange, where possible, to produce such material, and that the Board apportion the cost of such service among the individual associations in such proportion as it sees fit;

(37) that section 86 (6a) be amended by having added thereto the following:—

"In addition thereto the Board may, subject to such regulations as to compensation and other matters as it may impose, direct that the employer provide for and bring into operation one or more safety committees at plant level";

(38) that every effort be continued by the associations and the Board to encourage the formation of joint safety committees at plant level;

(39) that safety meetings be held on the job where possible;

(40) that the restrictive provision of section 53 which limits the Board to an expenditure of $200,000 for rehabilitation purposes be eliminated by deletion of the said section from the Act;

(41) that in addition to certain recommendations for minor changes, section 9 relating to third party recovery be amended to provide that any settlement made by a workman who has elected not to claim compensation must be approved by the Board and that a failure to obtain such approval will disentitle a workman to any further claim under the Act; in addition it is recommended that any surplus, above the costs incurred, recovered in an action by an individual employer or by the Board be paid to the claimant or his dependants under an agreement to apply such surplus against any future compensation or benefits to which he or they may become entitled.

CONCLUDING REMARKS

In bringing this report to a close I tender my apologies for such repetition as appears from time to time. Subjects have been numerous as well as entwined and, for the sake of clarity, it has been necessary at times to repeat what has been said elsewhere.

Although a great deal of time and much more than I had anticipated, has been devoted to the hearings and subsequent review of the matters raised in this inquiry, my major recommendations in the end have been few. The nature of the inquiry, however, has called for a reasonably full consideration of all subjects discussed. Some submissions may have been overlooked but I have considered, to the best of my ability those requiring attention and my failure to mention a submission does not mean that it has been overlooked. It has not been possible, in view of the length of this report, to discuss everything in detail.

I have been fortunate in having for this inquiry the assistance of very capable counsel in the persons of Mr. W. Z. Estey, Q.C. and Mr. H. D. Guthrie. Their industry and competence in preparing for the work of the inquiry enabled the hearings to proceed with despatch and their subsequent assistance in preparing this report has been most valuable. The demand on their time, as on mine, having been much greater than we anticipated, a major re-arrangement of their other work was required and their co-operation is appreciated. I am grateful to each of them for the substantial and important assistance afforded me.

I cannot conclude my remarks without expressing my thanks to Mr. George A. Johnston, Q.C., the able secretary of the Commission. His assistance in organizing the work of the Commission office, in tabulating and indexing submissions and evidence and in the arduous task of compiling this report has been invaluable. The heavy work load which he has assumed throughout has simplified my task to a marked degree.

I have referred in my opening remarks to the ready and prompt assistance I have had from officials of the Board whenever it has been requested. I must refer in particular to the assistance which the Commission received from Mr. William Kerr who has acted as Board liaison officer with the Commission. His services were made available by the Board at the beginning and he has been in constant attendance to assist me throughout. The benefit derived from his wide knowledge of the affairs of the Board, particularly relating to the adjudication of claims, has been of great value and I express to him my grateful thanks.

I have also had the advantage of the services of an actuary, Mr. C. W. Hartog, F.S.A. While the extent of his assistance may not be evident in my report it was of substantial assistance in the research which I considered necessary, particularly in regard to welfare benefits. The material which he has furnished will be made available to the Board. To him, as well, I express my thanks.

Lastly, I express appreciation to members of the press for their fair reporting of the hearings and to the secretaries and all others who have been of assistance, among whom I would mention in particular my personal secretary, Miss Florence Hyndman.

APPENDIX A

PUBLIC NOTICE
THE WORKMEN'S COMPENSATION ACT

Notice is hereby given that, pursuant to The Public Inquiries Act, Revised Statutes of Ontario, 1960, Chapter 323 the Government of the Province of Ontario has appointed the undersigned, the Honourable George Argo McGillivray, a Justice of Appeal of the Supreme Court of Ontario, a commissioner to inquire into and report upon and to make recommendations regarding The Workmen's Compensation Act upon subjects other than the detail administration of the Act.

All persons who desire to make any submissions within the scope of such inquiry are required to do so in writing to be filed with me at my Chambers, Osgoode Hall, Queen Street West, in the City of Toronto, on or before the 8th day of August next.

Thereafter a requisite number of public meetings will be held for the purpose of discussing and considering such written submissions. Due notice of the time and place of such meetings will be given to those who within the time above limited shall have filed any written submissions.

DATED at Toronto, this 16th day of June, 1966.

G. A. McGILLIVRAY

The above notice was published in the following Ontario newspapers on the 20th and 23rd days of June, 1966:

The Daily Press, Timmins
The Fort William Times-Journal
The Globe and Mail, Toronto
The Hamilton Spectator
The Kingston Whig-Standard
The London Free Press
The Ottawa Citizen
The Ottawa Journal
The News Chronicle, Port Arthur
The St. Catharines Standard
Sarnia Observer
The Sault Daily Star, Sault Ste. Marie
The Sudbury Star
The Telegram, Toronto
Toronto Star Limited
The Windsor Star

APPENDIX B

LIST OF THOSE WHO SUBMITTED BRIEFS AND THOSE WHO APPEARED BEFORE THE COMMISSION

	Counsel, other representatives and witnesses
A & T Wrecking and Salvage Co. Limited	
The Automotive Transport Association of Ontario	T. J. Sommerville, Solicitor.
The Bell Telephone Company of Canada	F. A. Burgess, Q.C.
The Board of Regents, the Chiropody Act (1944), Province of Ontario	D. J. Clemow, D.S.C., Director.
The Board of Trade of Metropolitan Toronto	T. G. O'Connor, Solicitor R. P. Riggin, Chairman, Labour Relations Committee
Campbell, Elman W.	
Canadian Manufacturers' Association	D. S. Keen, Manager, Ontario Division, N. E. Russell, Chairman, Workmen's Compensation Committee, Ontario Division W. H. Oliver, Vice-Chairman, Workmen's Compensation Committee, Ontario Division
Canadian National Railway, Canadian Pacific Railway and certain other railway companies	W. R. Burnett, Q.C. L. L. Band, Solicitor G. C. Butterill, Solicitor
Canadian Textiles Institute Institut Canadien des Textiles	
Canadian Tooling Manufacturers' Association	
Charity G.	
Christian Science Committee on Publication for Ontario	Leslie A. Tufts
Construction Safety Association of Ontario	D. Campbell, President G. Samson, General Manager
The Corporation of the City of Toronto	M. E. Fram, Corporation Counsel
Court, Arthur L.	
Department of Health of Ontario	Dr. R. B. Sutherland, Director, Environmental Health Branch, Dr. E. Mastromatteo, Chief, Occupational Health Service
Department of Labour of Ontario	T. M. Eberlee, Deputy Minister, H. Yoneyama, Director of Industrial Safety Branch C. G. Gibson, Director of Safety and Technical Services J. McNair, Director of Construction, Safety Branch D. F. McLean, Assistant to Director of Safety and Technical Services

Department of Mines of Ontario	R. L. Smith, Chief Engineer of Mines
Dooley, Michael J.	
Fee, Dr. Alexander	
Forest Products Accident Prevention Association	W. D. Staniforth, President E. H. Reeves, General Manager
Industrial Accident Prevention Association, Ontario	R. G. D. Anderson, Gen. Manager
The International Nickel Company of Canada Limited	C. R. Osler, Q.C. Dr. B. F. Hazlewood
International Union of Mine, Mill and Smelter Workers (Canada)	William Kennedy, National Executive Board Member W. E. Hall, Compensation Officer N. Thibeault, A Regional Director
Investment Dealers' Association of Canada	J. A. Black Wood Gundy Securities Limited
King, Mrs. Harriet	
Labourers' International Union of North America, Local 183	Raymond Koskie, Solicitor R. Atkey G. Gallagher, Secretary-Treasurer J. Stefanini M. Lynch N. Pike F. Ward
Lewis, Mrs. Hilda M.	
McEwan, V. K.	Solicitor
McKinstry, Robert J.	
Martin, Murdo, M.P.	
Mines Accident Prevention Association	F. Buckle, Director E. A. Perry, Executive Director S. W. McIntosh, Secretary-Treasurer
Morton, S.	
Motor Vehicle Manufacturers'	Russell Fair, Secretary-Committees P. J. Tuz, Manager, Safety J. A. Douglas, Ford Motor Company of Canada Limited J. H. Daugherty, American Motors (Canada) Limited W. Ives, General Motors of Canada, Limited Dr. J. Schisler, Chrysler Canada Ltd.
Neptune Meters Limited	
Northern Forest Products Limited	
Ontario Chiropractic Association	D. C. Sutherland, D.C., Secretary
Ontario Federation of Construction Associations	T. C. Cox, Executive Director Kenneth B. Paulin, Past President R. H. Nicholls, Director E. R. Graydon

Ontario Federation of Labour, C.L.C.	J. H. Craigs, Welfare Director D. F. Hamilton, Secretary-Treasurer Harvey Weisbach, Executive Secretary
Ontario Forest Industries Association	Maxwell Laggan, Manager
Ontario Legislative Committee, International Railway Brotherhoods	F. J. Culliton, Secretary-Treasurer J. A. Devlin, Brotherhood of Maintenance of Way Employees R. F. Hounsome, Brotherhood of Locomotive Engineers J. Martindale, Brotherhood of Locomotive Firemen and Enginemen
Ontario Medical Association	Dr. W. J. S. Melvin, Vice-President Dr. G. Sawyer, General Secretary Dr. J. E. Barnard, Chairman, Section on Industrial Medicine Dr. B. H. Young
Ontario Mining Association	C. P. Girdwood, President E. A. Perry, Executive Director J. A. Cooke, Superintendent of Safety, Falconbridge Nickel Mines
The Ontario Municipal Association	M. Dunbar, Secretary
Ontario Osteopathic Association	A. V. De Jardine, President
Ontario Provincial Conference of the Bricklayers', Masons', and Plasterers' International Union	D. Williams, President D. DeMonte
The Ontario Pulp and Paper Makers Safety Association	E. E. Grainger, President R. E. Scott, Secretary-Treasurer
The Optometrical Association of Ontario	D. H. L. Lamont, Q.C. J. W. Duffy, Administrative Director I. Baker, O.D.
Ostrowski, Jan	
Ostrowski, Mrs. Jan	
Parker, L. H.	Executive Director, Canadian Hearing Society
Paterson, Dr. J. F.	
Pifer, Conwell	
Pollitt, N. J.	
Provincial Building and Construction Trades Council of Ontario	H. Kobryn, Secretary-Treasurer Stanley Petronski, Chairman M. H. Nichols, Vice-President
The Provincial Federation of Ontario Professional Firefighters	G. Ireland, Vice-President E. Hothersall, Secretary
Retail Council of Canada	A. J. McKichan, General Manager
Rice, Mel	
Rio Algom Mines Limited	G. N. Yourt, Director, Health and Safety

Surry, Jean	
Swanson, Dr. J. N.	
Transportation Safety Association of Ontario	V. J. Doody, General Manager
Unemployment Insurance Commission, Ontario Branch	A. Clement, Supervisor of Adjudication, Ontario Regional Office
United Electrical, Radio and Machine Workers of America	Norman Ferguson, Research Assistant Roy Carless, Compensation Officer W. Paterson, Secretary, Toronto General Electric Joint Board M. R. Gulliford, Business Agent, Local 546 M. Broadfoot, President, Local 537
United Steelworkers of America	Lorne Ingle, Solicitor J. Dowling, Director of Safety D. Storey, Legislative Director W. Mahoney, National Director E. Park, Assistant to National Director G. Markle, Education and Welfare Director J. Hickey
Walker, Albert V., M.P.P.	
The Workmen's Compensation Board was represented by:	B. J. Legge, Q.C. G. R. Poole A. G. MacDonald Dr. A. B. Powell W. R. Kerr J. W. P. Draper H. Worling Dr. L. Brennan Dr. F. H. Hogarth Dr. T. Kavanagh Dr. F. H. Van Nostrand

APPENDIX C

A SUMMARY OF THE PROVISIONS OF THE WORKMEN'S COMPENSATION ACT (Ontario)

The Act extends to the workman protection for all accidents arising out of and in the course of the employment; it places the adjudication of claims in the hands of a Workmen's Compensation Board of three appointed members. In most of the industries to which the Act applies the employer's liability is made a collective rather than an individual one.

What is Covered

This law does not apply to all industries, but applies to the industries listed in Schedule 1 and Schedule 2 of the Regulations.

In the very large list of industries in Schedule 1 under the collective liability system, the Board collects assessments from the employers, forming an accident fund out of which compensation and medical aid are paid. In the much smaller list of industries in Schedule 2 each employer is individually liable, at the direction of the Board, to pay for compensation and medical aid to his workmen for accidents as they occur.

Schedule 1 includes the businesses of manufacturing of all kinds, lumbering, mining, quarrying, stone crushing, stone cutting, milling, packing houses, canning factories, printing, warehousing, teaming, cartage; taxis and buses; building in all its branches; coal and wood yards; operation of theatres and moving picture places; gas works; light, power and waterworks systems; construction or repair of roads, streets, sewers, bridges, railways, canals, piers, and wharves; fishing, dredging and stevedoring; repair shops including automobile repairs; butchering; bakeries; dairies; hospitals; hotels; wholesale stores or warehouses; laundries; dyeing and cleaning; office and apartment buildings and restaurants; retail mercantile businesses; farm operations; and some others.

In Schedule 2 are the businesses of railway, street railway, express, telegraph, and Dominion telephone companies; navigation, towing, and marine wrecking; municipalities, commissions, and school boards; and the Crown in right of the Province.

Other industries or employments may be added by the Board on the application of the employers.

"Workman" includes all employees whether performing manual labour or other service and includes a learner and a member of a municipal volunteer fire brigade. An employer, partner, or an executive officer of a limited company is not protected unless he notifies the Board that he desires to be covered.

When Compensation Payable

Compensation is payable where there is personal injury by accident arising out of and in the course of employment, and in the case of industrial diseases as defined by the Act and as included in Schedule 3.

The only exceptions are:

(1) Where the injury does not disable him from earning full wages for more than two calendar days;

(2) Where the accident is attributable solely to the serious and wilful misconduct of the workman and does not result in death or serious disablement.

The question of negligence or absence of negligence of employer or workman does not affect the payment of compensation.

No agreement to forego the benefits of the Act is valid. No contribution toward the benefits provided is collectable from the workmen.

The compensation cannot be assigned, charged or attached, except with the approval of the Board.

When any payment or advance is received by the workman from his employer during the period of disability, the amount is deducted from the compensation, and may be refunded to the employer.

The benefits provided are in lieu of a right of action for damages at law and such actions cannot be prosecuted for matters covered by the Act.

All questions as to right to compensation and the amount of it are determined by the Board.

In industries not covered by this law, actions for negligence may still be brought in the courts, but except for domestic servants, some of the employer's old defences are taken away. This is provided for in what is known as Part II of the Act, the part administered by the Board being called Part I.

Compensation in Death Cases

Where the accident results in death, the dependent widow is entitled to receive a payment of $75 a month during widowhood and if the workman leaves children, she is also entitled to receive $40 a month for each child under 16. The children's allowance in case of death of the widow is increased to $50. The total monthly payment shall not in any case exceed the average earnings of the workman, and if the pension would in any case exceed the average earnings it shall be reduced accordingly. Compensation for a widow and two of more children shall not be less than $150 per month. The widow is also to receive a lump sum of $300.

In those cases where children under 16 are the sole dependants, the amount of the award will depend upon the number of children and in some cases the workman's average monthly earnings. Where there are three or more children, each child will be entitled to $50 a month, the total not to exceed the average monthly earnings of the deceased and not to be less than $150 a month. Where there are less than three children the award is $50 a month to each child.

Where there is no dependent widow or child, but there are other dependants, they are to be entitled to a sum reasonable and proportionate to the pecuniary loss occasioned to them by the workman's death, but not in any case to exceed in the whole, $100 per month.

Where there are children but no widow, and it seems desirable to continue the existing household, and an aunt, sister, the mother of an illegitimate child, or other suitable person, acts as foster-mother in keeping up the household and taking care of the children, the same payments may be made as if she were the widow but only as long as the youngest child is entitled to payments.

There is special provision for invalid children over the age of 16, and there is also provision for payment to be continued for educational purposes.

Where the widow marries again, her own monthly payments cease upon her marriage, but she is entitled to a lump sum equal to two years' payments. The children's payments continue as before.

Burial expenses not exceeding $300 are provided under the Act, and in addition a further sum may be paid where owing to the circumstances of the case the body of the workman is transported a considerable distance for burial.

Compensation in Non-Fatal Cases

Temporary Total Disability

A workman totally disabled is entitled to receive three quarters (75%) of his average weekly earnings up to a weekly maximum payment of $86.54. The amount of compensation to which an injured workman is entitled shall not be less than,

For temporary total disability,

(i) Where his average earnings are not less than $30 a week, $30 a week, and

(ii) Where his average earnings are less than $30 a week, the amount of such earnings.

Temporary Partial Disability

If the workman is only partially disabled, he is to be entitled to receive the same fraction of the total disability allowance as his impairment is of his full earning capacity.

Permanent Disability

After the healing period has been taken care of by bi-weekly payments, any permanent disability resulting from the accident is considered. The award for all permanent disabilities, partial as well as total, is in the form of a monthly pension for life except where the impairment is not more than 10%, in which case payment is made in a lump sum or by instalments.

Medical Aid

When the workman's claim is allowed under the Act no matter what the length of disability, the workman is entitled to medical, surgical and dental aid, the aid of drugless practitioners and chiropodists registered in Ontario. Hospital and skilled nursing services are paid for and in the discretion of the Board where a workman is rendered helpless through permanent total disability such other treatment, services or attendance necessary as a result of the injury. He is also

entitled to be supplied with artificial members, apparatus, dental appliances and apparatus rendered necessary as a result of the accident, and to have it kept in repair or replaced when deemed necessary by the Board. Artificial members or apparatus damaged as a result of an accident arising out of and in the course of the employment are repaired or replaced. All this is included under the term "Medical Aid."

In Schedule 1 industries this is paid out of the accident fund by the Board, while in Schedule 2 industries it is paid for by the employer, at the direction of the Board. Any questions or disputes are to be determined by the Board.

Where a workman's claim is allowed under the Act, it is unlawful for any employer to collect or retain any contribution toward medical aid; nor is a doctor entitled to collect from the workman for services under the Act. The fees paid are regulated by a schedule approved by the Board after consultation with the professions involved.

First Aid and Ambulance

Where the number of workmen warrants it, employers are required by regulation under the authority of the Act to provide at their factory, plant or place of employment, suitable first aid or emergency equipment as prescribed.

Employers are also to furnish to injured workmen in need of it, immediately following an accident, ambulance or transportation to doctor, hospital, or home.

Rehabilitation

The Act provides that the Board may take such measures and make such expenditures as are deemed necessary or expedient to rehabilitate injured workmen. For this purpose the Board has established a Vocational Rehabilitation Department to aid injured workmen, particularly permanently disabled workmen, in returning to useful occupations.

Accident Fund

The accident fund, out of which compensation and medical aid are paid in Schedule 1 industries, is collected by annual assessments. The rate of assessment is expressed as so many dollars or cents for each $100 of assessable payroll. Only amounts necessary to pay for accidents in each class of industry are collected.

Every employer carrying on an industry under Schedule 1 is required to forward to the Board, not later than the last day of February of each year, a statement of the amount of wages paid during the prior year and an estimate of the amount expected to be paid during the current year. Every employer commencing a business operation under the Act during the year must report it to the Board immediately. Careful account of wages must be kept.

The assessment for the year is first made at the beginning of the year upon the estimate of pay roll and is adjusted after the close of the year according to the actual pay roll. The minimum annual assessment is $10.00.

Employers in Schedule 2 who have accidents are assessed for their portion of administration expenses but do not otherwise contribute to the accident fund.

Reporting of accident

The workman is required to notify his employer and the Board as soon as practicable after the accident and the employer in all cases involving compensation or medical aid, must notify the Board within three days.

Posters, telling both workman and employer what they should do in case of accident, are supplied by the Board and required to be posted up by the employer where they can be seen by the workmen.

Appeals

Any decision of the Board regarding compensation or classification may be appealed to a review committee. A further appeal to an appeal tribunal may also be made and from that tribunal, if necessary, an appeal can be made to the Board itself.

APPENDIX D

CLAIMS ADJUDICATION AT THE CLAIMS DEPARTMENT LEVEL

Purpose

It is the responsibility of the Claims Department to adjudicate initially all claims within the terms of the Act. It is the duty of every Claims Officer at every level within the Department to deal with each claim as an expert.

In the performace of his duty the Claims Officer may use every means possible such as telephone, teletype and telex to speed the flow of information and to arrive at a just, considered decision.

The workman is advised of any delay in receiving adequate information about his claim and prompt steps are taken by the adjudicator to expedite matters.

Organization

The Claims Adjudication branch consists of twelve sections designed to handle specific types of claims. Ten compensation sections are responsible for adjudicating lost time accidents. Determined by the last digit of the claim number, each section deals with one-tenth of the total volume. During 1965 organizational changes were made in the Claims Department to cope with the ever-increasing claims volume.

Assistance to Adjudicator

Various ancillary claims services have been removed from the adjudicators to permit claims officers to devote full time to their decision-making functions. The newly created Claims Service Branch is now responsible for supporting services in the payment of claims which include, among other things, computing payments and answering telephone inquiries.

Fatal Claims

The Fatal and Chest Section is responsible for decisions on Fatal Claims, Silicosis, Tuberculosis, Radiation and Cancer claims.

Claims for Medical Aid Only

The Medical Aid Claims Section is responsible for decisions concerning claims in which there is no compensable lost time but where there are payments to be made for medical and hospital bills. The processing of these accounts is being transferred to the Medical Aid Department.

Records Department

The Records Department, in addition to other recording functions, is responsible for recording accidents as they are reported, handling incoming and outgoing mail and controlling the movement of claim files. Between 1500 and

1650 new accidents are reported to the Board daily. Approximately 24,000 pieces of mail are received and dispatched daily.

Priority of Decision-Making

Compensation claims involving payment of compensation are more urgent than claims for medical aid only because they affect the family income. In the past, the same Claims Section considered both types of claims which slowed the adjudication of claims for compensation. Under the revised system, claims for medical aid only are diverted to the Medical Aid Claims Section to allow the Claims Officers in the Compensation Sections to devote full time to adjudicating claims. This change, along with improvements in records and the ancillary services, has expedited compensation payments to injured workmen.

When new lost time accidents are reported, the necessary forms are sent out within three days in over 90% of the cases. In February, 1966, a survey showing the number of days from the date the Board received notice of accident to the date of the initial payment revealed that 79% of the claims were paid within six to ten working days. A similar survey in June 1966 indicated that initial payment was made in 90% of the claims within six to ten working days.

Service Operations

A new Service Department in Claims, co-ordinates all service activities on a pool basis, and greater flexibility is achieved.

Decision-Making Responsibility

The principle of allowing adjudication to be delegated to independent decision-makers at various levels makes the individual Claims Officer responsible for his decisions. Training programs have been established to develop the skills and abilities of junior Claims Officers so that they can assume greater responsibility. Supervisors skilled in adjudication maintain close quality control by checking, by instructing and by being available for consultation.

Medical Advisers

Under the new system a Medical Officer is located in each Claims Section and is readily available to give opinions on the medical aspects of the case to Claims Officers which speeds the decision-making.

Medical Aid Claims Section

Of all accidents reported, 65% require medical aid only. By handling this volume of relatively minor claims in a special unit the operation has been improved and claims are dealt with effectively and quickly at minimum cost.

Investigations

Investigation by a Claims Investigator is sometimes the only method of establishing the facts clearly before arriving at a decision. Reasons for investigation are clearly defined by the claims adjudicator to guide the investigator.

Immediately the investigation is completed, the claim files are returned to Head Office for the decision-maker. The investigation procedure has now been revised so that claims are usually investigated within a week of the adjudicator's request. If the workman requests representation during his interview, this is permitted. In some cases, to avoid delays and reduce administrative costs, injured workmen are asked to call at the Board's office for interview and may be compensated accordingly.

Rejected Claims

In the former system, a rejected claim was automatically scrutinized, not by the decision-maker's supervisor, but by another body of three called a claims review committee. In effect this was a surveillance of the case without the injured workman being able to make representation. Now the adjudicator, with the approval of his supervisor rejects a case on the evidence. The decision is written to the workman with a simultaneous notice that he has the right of appeal to an independent Review Committee. Thus the decision-maker is responsible for his decisions and the workman has full and immediate disclosure of his rights.

APPENDIX E

SUMMARY OF INFORMATION

Claim

Claiming: Further disablement due to accident of October 13, 1961.

History: Claim allowed for painful right elbow for medical aid only as no time was lost from work.

(1) Employer's Report, October, 1961:

Report indicates that wrench claimant was using slipped and claimant banged his right elbow on machine frame.

(2) Report of Attending Physician, October, 1961:

Report states that claimant had pain in his right elbow. The elbow was x-rayed and strapped.

(3) Report of Physician, November, 1965:

Report states that claimant complained of pain in his right elbow radiating to his right shoulder, which he claimed had been present since his accident of October 13, 1961. It is mentioned that at the time of his accident, claimant's right elbow was x-rayed and there was no evidence of injury or disease.

(4) Report of Physician, February, 1966:

Report states that a diagnosis of traumatic arthritis was made, and it was the opinion that this could possibly have been caused by claimant's accident on October 13, 1961.

(5) X-ray Report, May, 1966:

Cervical spine—showed chronic C6-C7 disc degeneration and associated degenerative spurring causing encroachment on the right intervertebral foramen at that level.

(6) Report of Surgeon, June, 1966:

Report states history was obtained that approximately five years previously claimant was taking a nut from a bulldozer transmission, the nut suddenly let go and claimant struck his right elbow on the corner of the bulldozer seat. Claimant claimed to have had periodic recurrence of pain in the elbow since that time.

It is indicated that x-rays of the cervical spine demonstrated a considerable narrowing of the sixth interspace of the cervical spine with considerable evidences of osteoarthritis.

It is the examiner's opinion that claimant's condition was related to cervical disc.

It is mentioned that after being seen, claimant later telephoned and stated that at time of his accident when the nut suddenly came loose, he fell backwards and injured his neck.

(7) Report of Orthopaedic Surgeon, June, 1966:

Report states that following examination it was the impression that claimant's complaints were of a musculo-ligamentous nature originating from the area of his posterior chest wall.

(8) Report of Physician, June, 1966:

Report states that claimant had several times mentioned that he had struck his neck and elbow at the time of injury.

(9) Statement of Witness:

It is stated that claimant's accident was not actually witnessed, but witness noticed claimant sprawled out on the floor and claimant told witness what had happened. It is stated that claimant continued to complain of his arm, off and on, for a long time after the accident. Witness indicated that he also worked with claimant in the winter of 1964-65 and claimant was at that time troubled with the same condition.

(10) Claimant's Statement:

It is stated that on October 13, 1961 the nut he was working on suddenly loosened, and he shot backwards, slamming his elbow against the corner of the seat. He stated the momentum carried him off the vehicle and he fell to the floor below, ending up in a sitting position. He stated that although he continued to have recurring pain in his arm and a numbing aching in his hand and fingers, he did not make any further report to his employer and did not seek further medical attention until the fall of 1965.

Review Committee Finds:

that recent disability has not been shown to be related to accident of October 13, 1961 from information on file.

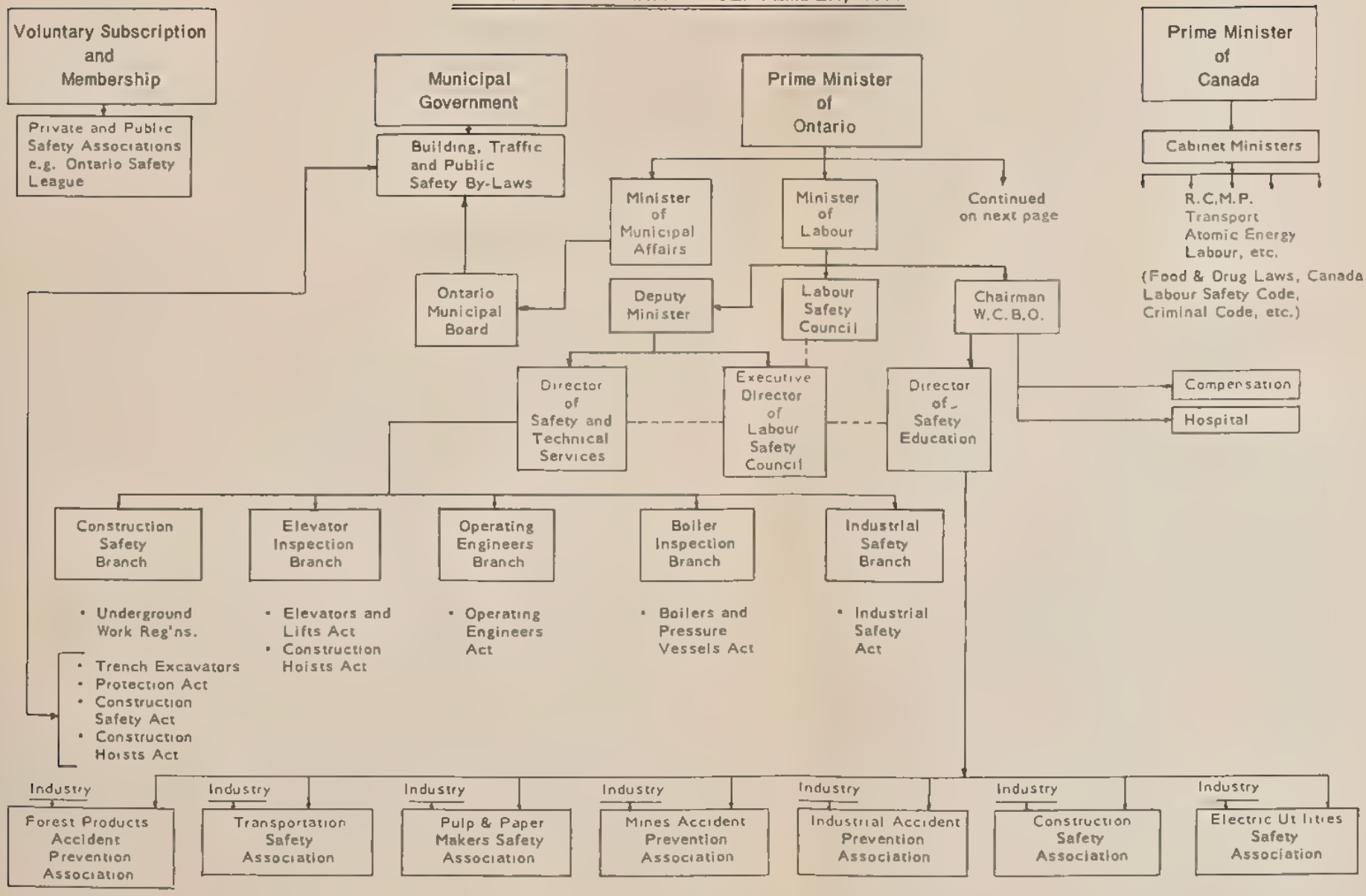
Reasons for Review Committee decision:

1. No mention was made of neck injury in 1961 and treatment was sought to right elbow only.
2. Medical attention to elbow and neck not sought in interval 1961 to 1965.
3. No complaints of trouble with arm or neck to employer in interval.
4. X-rays show a chronic degenerative condition in the cervical spine.

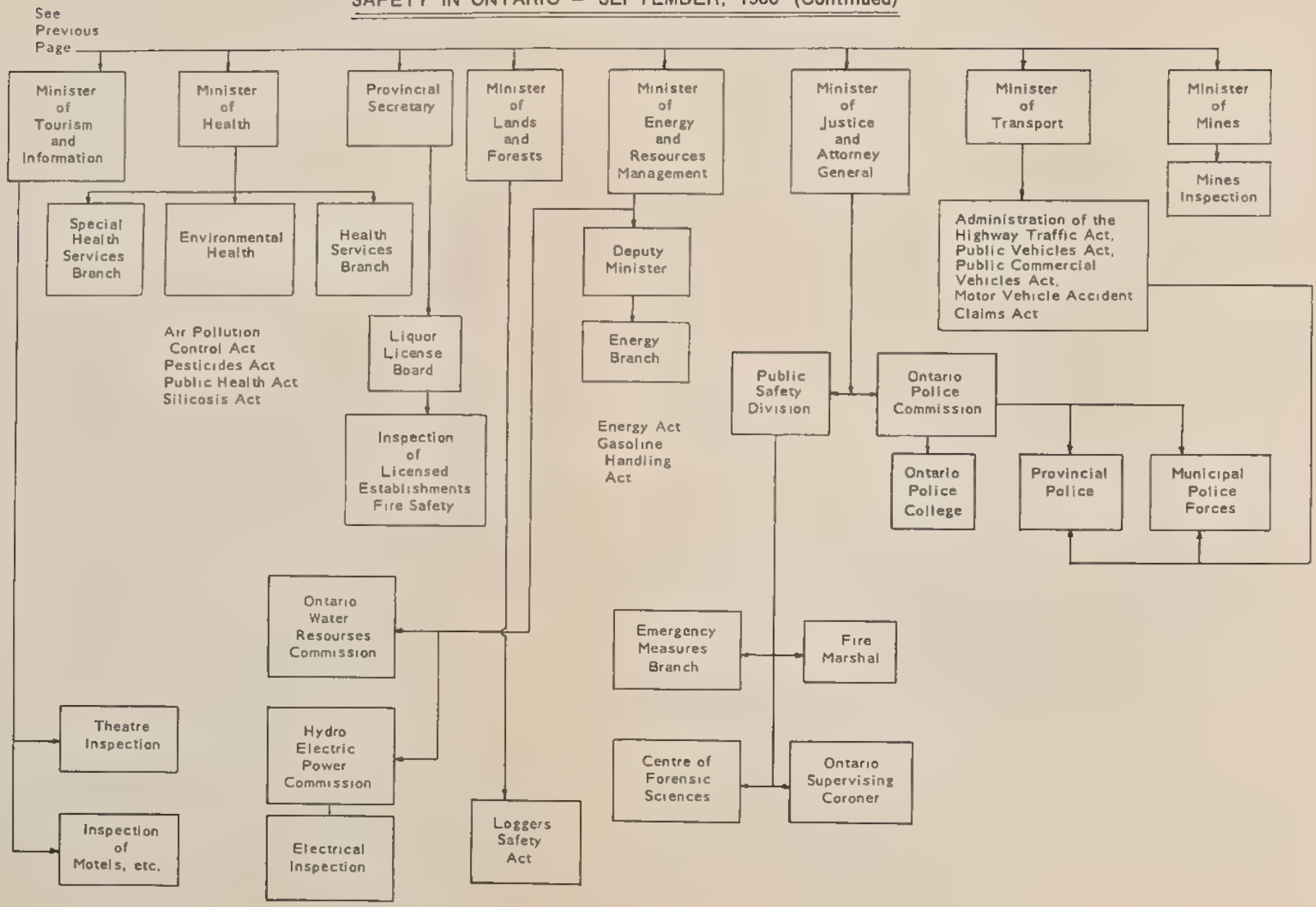
September 13, 1966. Director of Review Committee.

APPENDIX F

SAFETY IN ONTARIO – SEPTEMBER, 1966



SAFETY IN ONTARIO – SEPTEMBER, 1966 (Continued)



APPENDIX G

STATISTICAL RECORD OF APPEALS

JANUARY 1st TO DECEMBER 31st, 1964

Claims Reported	318,331
Claims Rejected by Claims Department	12,172
Appeals Considered by Review Board	1,123
Decisions Changed by Review Board	238
Claims Considered by the Board (some were appeals)	918

JANUARY 1st TO DECEMBER 31st, 1965

Claims Reported	359,353
Claims Rejected by Claims Department	15,289
Appeals Considered by Review Board	150 (Jan. 1-Feb. 28/65)
Decisions Changed by Review Board	43 (Jan. 1-Feb. 28/65)
Appeals Considered by Review Committee	2,350 (Mar. 1-Dec. 31/65)
Decisions Changed by Review Committee	473 (Mar. 1-Dec. 31/65)
Appeals Considered by Appeal Tribunal (hearings)	215 (Mar. 1-Dec. 31/65)
Decisions Changed by Appeal Tribunal	113 (Mar. 1-Dec. 31/65)
Appeals Considered by the Board (excluding Section 16)	11 (Mar. 1-Dec. 31/65)
Decisions Changed by the Board	5 (Mar. 1-Dec. 31/65)

JANUARY 1st TO OCTOBER 31st, 1966

Claims Reported	309,569
Claims Rejected by Claims Department	13,387
Appeals Considered by Review Committee	2,718
Decisions Changed by Review Committee	817 (107 outstanding)
Appeals Considered by Appeal Tribunal (hearings)	516
Decisions Changed by Appeal Tribunal	223
Appeals Considered by the Board (excluding Section 16)	71
Decisions Changed by the Board	33 (2 outstanding)